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THE CONSTITUTION OF AN INTERNATIONAL COURT OF JUSTICE

REMARKS BY HON. ELIHU ROOT BEFORE THE ADVISORY COMMITTEE
OF JURISTS AT THE HAGUE, JUNE, 1920

Remarks on June 17, 1920

Resolved, That the committee adopts as the basis for consideration of the subject referred to it, the Acts and Resolutions of the Second Peace Conference at The Hague in the year 1907.

That the provisions of the several plans for an International Court of Justice already elaborated by representative jurists of Sweden, Norway, Denmark, Holland, Switzerland, Germany, Austria, be laid before the committee and considered as the subjects to which they respectively relate, are taken up for consideration.

I have offered this resolution in entire harmony with the view expressed by the president of the committee as to the consideration of the important questions which underlie the whole subject referred to the committee.

The resolution was drawn up for the accomplishment of several objects:

(1) To give notice to all the world that this committee will consider the great subject referred to it, not as an opportunity for the expression merely of our individual opinion, but under a sense of duty to build upon the basis of the past development of the subject to which so many members of the committee have already contributed so well. I would be glad to have the world know that we begin here again the course of development of the law of nations, the principle of justice in international affairs. There is throughout the world much respect and reverence for the self-sacrifice and devoted work done at The Hague in the conferences of 1899 and 1907. I think the committee should make clear the relation which it means to bear to all that work and all that was accomplished then, and I am sure that the clear understanding that the committee is beginning its labors in this spirit will be gratefully received by the people of all the civilized countries of the world. I know that it will be so among the people of my own country.

(2) We have received from the Secretariat of the League of Nations, in printed form, plans for a Court of International Justice having very high authority; the jurists of Norway, Sweden, Denmark, Holland and Switzerland have met and discussed this very subject and they have formulated their conclusions and have formally communicated them to the Secretariat of the League of Nations, and these conclusions have been transmitted to us. Also, Germany and Austria have sent expressions of their views. In some way we should indicate to all these nations the sentiment of profound respect that we have for the work that they have done. We should treat their recommendations

or suggestions with due respect and not pass them *sub silentio*. This resolution was designed to carry to the minds of our friends in these countries the knowledge that we recognize the work that they have done with great respect and with the purpose of due consideration. Another idea is involved in the resolution. It is that there may be something invidious if we try to select among these plans one rather than another for a basis of discussion. There can be nothing of that kind if we take the conclusions of all countries reached at the Second Hague Conference. And we here come from but a few countries. We cannot come from more than ten if there are only ten of us. But let us see that the people of other countries from which no citizen sits here understand that we are going to consider in our work not only the feelings of the people of the countries from which we come, but the feelings and the opinions of the people of all countries. Let us lay down in some such declaration as this a broad foundation of unanimous international consideration of international subjects. I hoped that this resolution would carry to the people of all countries the idea that we were going to start by considering as the basis of our discussion the conclusions that they had taken at the Second Hague Conference. The working out of this resolution would be precisely as the president has suggested, that we take up the provision and form of court adopted at The Hague as the basis for discussion. For example, if we determine to take up first the subject of the jurisdiction, the competence of the court, the provisions of the Hague Conference would be the basis of discussion and the provisions of the five-Powers plan would be read as relevant to that. Whatever there may be in the Austrian or the German plan relevant to that, should also be read, and then we could proceed to our discussion. The object, the effect of the resolution will not be so much to affect the order of our work as it will be to declare the principal point from which we propose to start.¹

Speech of June 18, 1920

We have now come face to face with the difficulty which prevented the adoption of the plan for a permanent court by the Second Hague Conference of 1907. That difficulty was the unwillingness of the large states to permit the members of the court to be named by the majority, which would always be composed of representatives of the smaller states, and, on the other hand, the unwillingness of the smaller states to permit to the larger ones a preponderance of power and authority, which was deemed to be inconsistent with the theory of equal rights of sovereign states. One view has been stated by a part of our colleagues, and the other by another part, and those two views are opposed.

¹ The resolution as adopted by the Committee reads as follows:

"The Committee begins its deliberations by rendering in the first instance homage to the labors of the Peace Conferences of The Hague, which have already prepared with exceptional authority the solution of the problem of the organization of a court of international justice.

"Ready to consider in addition the projects emanating from governments, from conferences initiated by governments, of scientific international associations, and of jurists of every nationality, whose labors have preceded its own, it will take note of all sources of information which are at its disposition in order to justify the confidence of the Society of Nations."

A statement of them does not solve them—it does not solve the question. The simple adoption of one view by itself would apparently send the plan of the court to the Council of the League of Nations with the most difficult question unsolved.

It seems to me that both views are, in a broad sense, right. We must accept and sincerely support the equal rights of every sovereign state—that is the foundation of the law of nations. On the other hand, we must realize that an aggregation of fifty millions or one hundred millions of people will have more active interest, more important affairs, dependent upon the action of the court than an aggregation of one million or one hundred thousand; so that the equality of sovereign states in law does not agree with the inequality of practical interests which depend, not upon the grouping of individuals in states, but upon their production, their trade, their commerce, their activity. The two do not fully agree and each has some right to its view.

For example, we may say that in the cases of arbitration which have been brought before the present Arbitration Court at The Hague, only few countries have been concerned, and doubtless there are many countries whose mode of life and whose international affairs are such that they will seldom, if ever, have recourse to any court. Now, our problem, it seems to me, is to reconcile these two views, which approach one another from very different points, the one coming from the constituted and indisputable point of the legal equality of states, and the other from the practical point of view of a deep and extensive practical interest in the subject. Can we not find some mode of constituting this court which will be consistent with both, and which will preserve the true interests of both? That, it seems to me, is the most serious problem which is committed to us. Similar situations frequently arise in life. A number of citizens of any free country have to determine some question regarding which they have an equal right because they are equal politically with equal voice in the affairs of their country. At the same time, some of them have a much greater interest in the matter which is to be disposed of than the others. It is not at all uncommon that in the exercise of the free right of equal citizenship such dispositions of practical matters be made as to recognize their greater practical interest. Can we not accomplish that task?

Allow me to refer to an example which naturally arises in the mind of an American. When the present Constitution of the United States was formed there was precisely the same kind of question raised in the convention of 1787. We were all independent sovereign states—some large, some small. The large states were unwilling to permit the majority of the smaller ones the control which would come from equal representation, and, on the other hand, the smaller states were unwilling to allow to the larger ones the preponderance of power which would arise from the recognition of their greater population and wealth. That *impasse* was disposed of by the creation of two chambers, in one of which the states are represented equally, and another in which the population is represented without reference to the sovereign states in which the people reside. Now, I mention that, not for the purpose of proposing that disposition here, but for the purpose of illustrating the way in which such a question has been

disposed of, and disposed of so that for 130 years it has worked practically and satisfactorily. That disposition has been followed by many nations. In Central and South America similar questions have been solved in a similar way; and in every country where there is a bi-cameral legislative body, you will find that there is a reconciliation, by means of the two chambers, of certain conflicting ideas. Now, that is the method of development of political freedom. That is the method of the development of civilization,—finding practical methods of reconciling, for useful activity, conflicting political theories. And that is our task.

I must confess that after much groping, much searching, among many proposals, I have not yet found any which is entirely satisfactory to me, but I have found so many which come very near, that I am certain we will reach it by discussion, by comparison of views, by the enlightenment which comes from hearing the expression of opinion from different points of view. I am confident from what has been done that we will reach a practical solution, although I cannot get to it now completely. There is some objection to every suggestion. I wish very much for an opportunity to study the suggestions made by Baron Descamps yesterday and those made by M. Adatci. My hearing them, with my defective knowledge of spoken French, has not been sufficient for me.

I think there is another thing, however, that may now be said. We are a committee invited by the Council of the League of Nations to prepare a plan, which is to be formulated and submitted by the Council to the members of the League for adoption; it is to be a plan for the establishment of the Permanent Court of International Justice. Now, let me say in passing, that I believe that the court we create should be a court to coexist with and bear due and appropriate relations to the existing Permanent Court of Arbitration at The Hague—not to be substituted for it, but to form part of the same system of international judicature.

I propose not to discuss but to suggest for consideration this question: How far should our plans articulate with the existing organization of the League of Nations, the formation of the Council, the formation of the Assembly? Should we form a plan having close relation to that political organization, or should we form a plan which ignores that organization? It does not follow from the fact that the organization of the League of Nations is political, excepting Articles 13 and 14 relating to the court, that there can be no intimate relations between that political authority and the formation of the court. It may be that we can find there the solution of our question. At Paris, the Peace Conference secured a *modus*, which did not satisfy entirely both views, in the constitution of one chamber,—the Assembly in which every Power great and small is equal to every other; and another,—the Council, in which there is a preponderance of the great Powers.

Now, is it possible that the Council and the Assembly will accept and put into force the plan of the court if the plan ignores their existence? How are courts constituted originally? However perfect may be the distinction between judicial and political powers, the personnel of the judiciary must necessarily have its origin in the political power. In my own country, the justices of the

Supreme Court and all of the Federal courts are appointed by the President. The judges of the Court of Cassation in France owe their appointment to political authority. Our colleague, Lord Phillimore, whose judgment upon a judicial question would be without fear or favor as to any political authority, nevertheless derives his appointment from political power. Under every plan suggested, the judges come from a political authority.

I beg to suggest, for the consideration of my colleagues, whether possibly the election of judges by the concurrent vote of the Assembly and the Council might not point out, for our purpose, the same solution of this difficult question which already has been accomplished on the political side. That would have several advantages. The effect of the necessity of concurrent action by two bodies is that neither one can do anything which is oppressive in respect of the interests specially represented by the other. That is so in the making of all laws, and it is so when appointments are to be made by legislative bodies. The effect of the practical working would be that in the Assembly, where the smaller Powers are in majority, they would protect the interests of the smaller states, and in the Council, the larger Powers having a preponderance, would protect such practical interests of their greater trade and their greater production as would be submitted to the court. The practical effect would be that the selection would be made at the time of the meeting of the Assembly; that would be necessary, and the electors would be canvassed; one could discuss and consider individual names at that time.

The practical method of reconciling differences between two bodies is a committee of conference,—a small committee of conference. In that committee all considerations of good faith, all justifiable doubt or apprehension of injury to interests, would be considered without the difficulty that comes from publicity. This selection of judges is an intensely practical thing, and care must be taken not to have it undertaken in such a way as to drive off and practically exclude all the best men. The best men in all countries will be unwilling to permit their names to be put before the world in a contest for something which perhaps they would have to make great sacrifice to accept. The best men, the men we want, are the men whom you have to urge to come in; these men will not be candidates. On the other hand, if you elect a man who seems to be the best, you must have some way of finding out whether he will serve. For example, the Council selected as a member of this committee a very old and valued friend of mine in the Argentine, M. Drago—a most admirable selection. M. Drago could not come. How many times, if you are going to elect a judge, will you not find that situation? Of the members of the committee, a majority are not the ones originally named. Even for this service, to get the committee, a process had to be worked out for finding out who could leave his home and his occupation to come and render the service. This committee was constituted by an authority absolute. When Sir Eric Drummond wrote to a jurist inviting him to render this service, we all knew that the Council for which Sir Eric spoke had absolute authority to make the person receiving the letter a member of the committee. You cannot get that by the ordinary process of election. In an ordinary method of election, the candidate will not say that he will serve before he knows whether

it will be offered to him, and the election therefore has to take place before the electors know whether the candidate will serve, and the practical method of dealing with that is some such method as this conference committee between the two bodies.

I do not state this view as a conclusion, but as a method which has occurred to my mind as being perhaps nearer to the accomplishment of our object than anything else that has been suggested, the object being, in any arrangement we make, that both the divergent interests shall have a negative power to prevent injustice and an affirmative power to propose action and in dealing with practical questions. If these two powers exist, it should be worked out in some such practical way as that in which free self-government is carried on in every country where it exists.

That is all that occurs to me to say at present, except that I will preserve an open mind for the most respectful consideration of the suggestions of my colleagues on the committee.

Remarks of June 21, 1920

I beg to express my appreciation of the clear and satisfactory way in which the president has responded to the request which I made at the last session, in explaining the plan he has proposed, and I can assure the president that the plan will be studied and considered by me with the most sympathetic feeling and high appreciation of the elements of value of the proposition.

When I was called upon to speak at the last session, I was about to make some observations upon the general subject of the theory which underlies our whole procedure of the formation of the court, and to follow such observations by some other reference to the practical necessities imposed upon us by our assignment of duty here.

There are two fundamental principles laid down by the members of the committee, with which I think we all agree, and by which I think we are ready to have any suggestions we make decided. One is the proposition that the end of this court which we are about to recommend is justice. Unless that court succeeds in doing justice, it is worthless; we shall have failed in our efforts. The other proposition is the equality of sovereign states; to that we all agree; that we are bound to maintain, for it is the very basis, the *sub-stratum*, which underlies the law of nations. Without that, there is no law, and we return to the days of barbarism and unrestrained brute force.

In applying the first principle, we are seeking justice. The task is one of the adaptation of means to an end; it is that we may recommend that the proposed court be so constituted that, with the greatest certainty possible to human nature, it will do justice,—a practical adaptation of human means to secure a divine end.

In applying the other principle, that of the equality of sovereign states, it is necessary to consider the nature of the transaction on which we enter and to see whether the principle covers the transaction. The principle is limited definitely. The equality of states does not mean that they are equal in numbers,

in extent of territory, in wealth, in power; it means that they are equal in the sovereign right to control their own actions and to freedom from accountability to others. It relates to the rights of each state over its own territory, its own subjects or citizens. Every state is exercising these rights in agreeing or refusing to agree to any arrangements we propose. Monaco, Luxemburg, Haiti, San Domingo, have the same inalienable right to consent or refuse to consent as Great Britain or France. That is the exercise of equality. In brief, it is equality in the exercise of the rights of sovereignty.

When, however, we come to the creation of a court, we pass beyond the exercise of the rights of sovereignty. In constituting a court which is to render judgments limiting the rights of nations, we shall not be merely exercising the powers of sovereignty. What sovereign right has France to limit the sovereignty of Italy, of Great Britain? What sovereign right has Italy to name a judge to say if the power of France should be limited? Whence does this power come? From the sovereignty of Italy? It comes from consent; it has its origin in consent, not in the theory of sovereignty, not in the law of nations; it is purely conventional. The right of Italy to name a judge who can give decisions limiting the sovereign rights of France comes, not from the sovereignty of Italy, but from the consent of France.

As the function to be observed is a function not resting in sovereignty, but resting in consent, then, in determining whether the consent should be given mutually and upon what terms, we must consider not merely the theory of national equality, but the conditions and circumstances of the agreement which we are proposing to make. You have passed from the field of exclusive application of the theory of equality of nations. You have passed into a different field, in which, to determine what course should be followed, you must consider everything as relevant that is reasonable. You cannot say you wish to consider alone the doctrine of equality; you cannot say you must exclude from consideration all those circumstances from which one nation derives the greater interest in a subject-matter than another. All relevant facts must be considered.

For example, take the Convention for a Universal Postal Union. The nations which have made that agreement were equal undeniably, but is that equality treated as the sole test of the stipulations included in the agreement? No! There are, I think, seven classes, the nations being classified according to the benefits which they derive from their business, and also according to their resources for bearing the expense. Great Britain, Japan, Italy, France, the United States, Germany, Austria-Hungary, pay many times as much as the smaller states. That is an illustration of the way in which practical common-sense deals with the basis of agreement for a specific object between equals, and that has been carried into the basis of the League of Nations, the nations being obliged to bear the expense in the proportions of the Universal Postal Union.

The moment you depart from the basis of unanimous agreement, which in diplomatic conferences connotes the uncontrolled equality of states, and submit anything to the determination of a majority, you have left the field of sovereignty and subjected yourself to the application of other considerations than those of the equality of states.

What kind of agreement will it be reasonable for all our countries in the exercise of their equal sovereign rights to enter upon? It is to attain justice. But to agree merely to attain justice is to accomplish nothing; for all civilized nations are already agreed to do justice to each other. What we are to seek is a practical means of so limiting the weaknesses, the passions, of so enlightening the ignorance and awakening the understanding of men engaged in the affairs of nations, that there will be the highest possible probability of justice being done.

The object is to secure an institution which, by the application of just principles, will curb the exercise of power, and it is because that is an essential object to be attained that we find throughout the history of the effort to create such a court, a clear division of the smaller nations, on one side, and the larger on the other. The division which occurred in 1907, and which is here before us today, is the best proof that among the fundamental necessities of the case is the curbing of power. Whose power is to be curbed? Not the power of Haiti and of San Domingo, but the power of Great Britain, of France, of the United States. We are not called upon by the general voice of the civilized world to make an effort towards the establishing of a court to curb the power of Norway or Holland. The great Powers, with their immense armies and navies, in the presence of which the smaller nations of the world feel that their lives are in danger, unless justice prevails and a practical method of securing justice be agreed on, are to be curbed. This court will be a court to curb the power of these great nations, on the one hand, and to give protection to small nations on the other.

It follows that the nations are not similarly situated in respect of this project. The surrender of power to limitations imposed by a court is a surrender made chiefly by the great Powers. Small Powers surrender practically nothing, but they get protection, which the great Powers do not get. I repeat that the great Powers and the smaller Powers, who have been opposed since 1907, are not similarly situated in respect to this question. One is the group that is giving, another the group that is receiving, and you cannot solve a question of that description which affects different states in a different manner, in which the states have different kinds of interests, by the application of the theory of the equality of states. You must deal with it as a question to be considered upon the basis of the realities that are to be affected, and it is not reasonable to suppose that these great states will consent to have their power limited, to surrender their sovereignty to a tribunal the constitution of which is to be entirely within the control of the smaller states. The simple constitution of the court by a majority of equal states would place them in the hands of the smaller States, who give little and get much, and always they would have the power to over-ride the larger states, which give much and get little.

It is not wise always to think of states as if they were not composed of individual human beings. There is a particular distinction which divides the people of nearly every country. Every mind will revert readily to the differences between the military party and the peaceful party in a country in its relations with the other states. During the recent war, at times there was a

tendency towards peace, when the peaceful people of Germany wished to end the war; and then a movement the other way, and the military party secured the ascendancy again. In every country there are these parties, and they are always in conflict. What we must do is to present a reasonable proposal, to insure that the principles of peace and of justice may take the control in each country.

The principle of equality of states has, in recent years, met another principle. The growth of democracy in the world has been accompanied and produced by the growth of the conception of individual personal independence. Our recommendations in respect to the court will have to be submitted, not to the Foreign Offices; they will have to be submitted to those great democracies of hundreds of millions of people, knowing but little about international affairs, ill-informed, not accustomed to consider or to discuss or to act upon them,—and they control the Foreign Offices. The government must reach decisions which commend themselves to the great popular mind in our modern democratic governments. With these hundreds of millions of plain people, the theory of equal sovereignty is accepted, but it is a weak motive as compared with the idea that a man counts as much in his own country as in another. No theory of sovereignty or equality is going to get out of this man's head in France, in England, in the United States, that he is just as good and just as much entitled to his voice in the world as the man in another country. And you propose to each member of this multitudinous sovereignty, that his country shall surrender its sovereign rights of control to a tribunal made up in such a way that a man across the border weighs as much as one hundred men on the other side. See what result you get. The tendencies of intercourse and these efforts that are drawing countries nearer together, are leveling the differences and favoring individual manhood and the rights of a universal majority as against the extension of the application of equal sovereignty. The people of the United States number more than a hundred million, and if you ask the hundred million to consent to the sovereign rights of their country being limited in a court in which the one-half million in Honduras can outvote them, all the Foreign Offices in Christendom can never succeed in getting this recognized.

After all, there is that element of individual right and interest involved in all these international troubles; the greater part of the troubles are troubles where a country is championing the cause of its nationals. Remember that the question to be put to the public in these great countries is not a question of consent to the application of sovereignty; it is a question of creating power by consent, a power which is not founded in sovereignty, but a new power with a right to control the action of the several states.

I would not for a moment be thought to be pessimistic or critical in my judgment of the probable conduct of any country, which, under whatever agreement we make, finds itself engaged in the construction of a court; but I have to look facts in the face. There are backward nations, many quite shut up within themselves, some of them centuries behind in political development. Those nations which are the most backward are the nations which have the least interest in the court. But according to the simple method of constituting

a court following the principle of equality, all those backward nations would have a vote.

Some nations which are included within the theory of equality are countries in which the principle of ex-territoriality is still applied, and they will have a vote, and the proposal is that because equality has been accorded to them they are to have an equal voice in constituting this court, although it has been necessary to maintain ex-territorial tribunals in these countries inasmuch as the principles of their jurisprudence are so different from those obtaining in the greater part of the civilized world. And this is so to maintain the rights of foreign nations under international law, notwithstanding the theory of equality.

What I have said relates only to the weight and value of opinion in these backward nations. There is, however, another thing to be said; the nations will not come to the constitution of this court with minds that are *tabulae rasae*.

The experience of ordinary life and of nations shows that there will be combinations. I say not that there may be, but that there *will* be. Human nature has not changed radically. The men who ought to be in this court are the men who should be sought by somebody competent to offer to them the appointment. We will have to seek them and urge them to consent to exile themselves from their homes, to abandon their careers, to commit their future; and the men who ought not to be there will be the men who will intrigue to get there, the self-seeking men, the men who cannot rise to the highest places in their own courts will seek places in this court, and they will seek support, while the best spirits will quietly go on with the performance of their own duties. That is certain.

Who can go back home and say that this is not so? And what will be the response? People are asked to create a court and to give their consent to create a power which may be exercised in the way that I have described, to control them. It is not so that governments perform their duty and maintain their proper rights. If they are to consent away that power they must see that the power they consent away will be guarded, and for the reasons which I have stated very crudely. We must adjust the differences of opinion in some practical way or we will have no court.

Remarks of June 22, 1920

Reflecting upon the suggestion of Mr. de Lapradelle and his reference to me, some of his suggestions seem to meet the requirements of the situation. I have made a memorandum in which I have sought to follow the idea Mr. de Lapradelle has expressed and to incorporate the most valuable propositions in his plan submitted to the meeting by the president:

1. Election by Assembly and Council.
2. Qualification, juridical eminence and character.
3. Lists of persons deemed to have qualifications to be furnished before meeting of Assembly by the members of Permanent Court of Arbitration at The Hague—the members appointed by each nation to propose not less than two nor more than four names, one-half to be from nations other than that by which the proposers are appointed.

4. Votes on the list thus formed as provided by Lord Phillimore.
5. So far as vacancies may not be filled by election from this list, other names may be proposed by Assembly or Council and voted upon in like manner.
6. In all elections the electors to be under honorable obligation to regard the qualifications stated and to seek adequate representation in the Court for the different systems of jurisprudence.

I assume two fundamental propositions: That the Permanent Court of Arbitration at The Hague which now exists should remain, not be superseded—and that the new court should form a part of the judicial system of which the old court is a part.

There are four different functions to be allotted to these two different judicial institutions:

- (1) to determine questions of strict law and questions arising from contracts;
- (2) to determine questions depending upon the principles of justice applicable in the absence of rules of strict law or contract provisions;
- (3) to determine facts which are unknown or are disputed;
- (4) conciliation.

These four points are to be provided for in this system of which the old court is part and the new court will be part.

We must first consider that this new court must be provided for as a part of the system of which the League of Nations is part. We cannot accept the invitation of the Council and recommend a plan for a court which is not going to form a part of that system.

I think that the participation of members of the Permanent Court of Arbitration is very desirable, because we have in that list men who are recognized in each country as being specially familiar with the subject with which the court is to be familiar, and with the personnel in other countries which are interested.

Such a provision appropriates the initiative of the Norwegian Parliament in the work of the Nobel Committee. In the selection of the persons to whom the peace prize is to be given, the award is made upon lists furnished by previous recipients of the award. Professors of international law and other persons specially selected are called upon each year to propose names. Here we have a special class of persons who are called upon to propose names. If we look into the working of the government of each country in domestic questions, we see that it would not make a great difference whether the government of this country or that proposed names through a purely political officer who had only the idea of domestic politics in his mind, and who had to accomplish some object of domestic politics. Every court is subject to that. It is, however, very desirable that we should make such dispositions that the persons in each country who make this suggestion for the International Court shall be persons who are not what is called "playing politics," but who have the international mind; that is what I take it we wish to accomplish by the selections proposed by the heads of universities.

I think that the participation of the members of the Permanent Court of Arbitration rather comes at the beginning than at the end as suggested by M. de

LaPradelle. If it comes at the end, it would be as arbitrators to determine a difference between the Council and the Assembly.

It is only the final decision which is important. The pressure of necessity will be more valuable than the power of decision by someone else. The legislation of the world practically is accomplished in the same way; differences between two opinions are recognized under the pressure of necessity; there must be a law on such and such subject, and the advocates of the opinions which differ are compelled to reconcile their differences, because there must be a law. There must be justice, and if the electors do not agree they are condemned for incapacity. If the members of the Court have the opportunity to propose this list, the origin of it will be a guarantee of qualification; and if the electors cannot agree upon one named, the opportunity to propose names outside the list will guarantee that someone be found.

The last proposal that in all elections the electors are under an honorable obligation to regard the qualifications stated and to seek adequate representation on the court for the different systems of jurisprudence is, I think, a view in which we all agree. It seems to me that it also includes valuable ideas which have been proposed by a member of the committee.

I claim no patent or copyright upon those various proposals, and admit that they are "stolen property."

NOTES ON WORLD SOVEREIGNTY

BY ROBERT LANSING

Former Secretary of State of the United States

[EXPLANATORY NOTE.—These Notes on World Sovereignty were intended to be a third series to follow and supplement the Notes on Sovereignty in a State, which were published in two series in Volume I of THE AMERICAN JOURNAL OF INTERNATIONAL LAW. This third series was not published at the time, however, because the logical application of the theory to the world as a whole seemed too speculative and to lack the practical value of the two series published in 1907. However, the discussion seems less academic and more pertinent to present day philosophic thought concerning the political relationship between nations than it did fourteen years ago.

The Notes here printed for the first time, are identical with the manuscript prepared in 1906. Possibly some changes might be appropriately made in the text in view of the new conditions which have arisen since the Notes were written, but it has seemed best to complete the three series in their original form and as of the time when they were written.—ROBERT LANSING, December, 1920.]

INTRODUCTORY

Having reviewed in the preceding Notes¹ the characteristics and qualities of the sovereignty which finds expression in a state, it is proposed to consider now the more extensive type of sovereignty which affects politically the entire human race and territorially the whole earth, and to which reference was made in the Introductory Note. The reason for considering the lesser form first has been stated, and the soundness of that reason will become more apparent in the course of the succeeding argument.

The conception of the type of sovereignty which is manifested in the external and internal relations of a state, is necessarily limited by the point from which it is viewed. Thus far in the discussion that viewpoint has been the state as the highest form of a political organism in that it has attained complete development. In dealing with sovereignty in a state in its external sphere of activity, that is, in the relations between the sovereigns of different states, it was necessary to rest upon the assumption that these sovereigns were equal and equally independent. An assumption, however rational it may be, is never satisfactory and never conclusive; but from the standpoint of the state, the correctness of this assumption could neither be established nor disproved. Still the truth of an assumption relating to man as a political being and not as a moral being

¹This JOURNAL, Vol. 1 (1907), pp. 105, 297.

must be capable of demonstration by historical facts. If the point of view is insufficient, it must be widened or a new one taken which will be comprehensive enough to embrace all that has been assumed, so that it may be tested by positive evidence. It is intended to do that in these Notes—to widen the horizon of the discussion.

This more comprehensive point of view is the one already referred to, namely that which sees in the world but a single social organism all-inclusive and universal, which minimize the sovereignties in states, affects their realities, and raises the question whether such sovereignties are real or artificial. Confessedly, if there exists a sovereignty that is superior to the sovereignty in a state, it has not yet developed into the positive type which is manifest in a political state and which history and experience recognize. It is still unformed and necessarily a theoretical conception. Nevertheless, it will be seen, as the nature of sovereignty is viewed from the broader standpoint, that powerful political and moral influences are at work in the world to change the theory into practice. Among these influences, the most potent is the increasing realization by civilized peoples of the interdependence and mutual responsibility of states in their political and economic relations.

This realization compels the conviction that the entire human race ought to be considered, and in fact is, a single community, which awaits the further development of modern civilization to complete its organization and make of all mankind a great, universal political state. There is, therefore, sufficient ground for an examination of sovereignty from this standpoint; and it will be found that, though there has been no formal recognition of the existence of such sovereignty, the great states of the civilized world have recognized, perhaps unconsciously, its existence in the applied law of nations, just as they have recognized it in the sphere of morals by giving binding effect to the principles of humanity.

THE IDEA OF A WORLD COMMUNITY AND WORLD SOVEREIGNTY

Since it is possible to conceive of the human race as one body composed of a large number of political groups including millions of individuals, or as one body with these individuals as units, and, in either case, as a community, it follows from the very nature of things that in this unorganized mass of humanity there must be a certain body of individuals possessing a physical might sufficient to compel obedience by every member of the human race throughout the world. Such superior physical might constitutes sovereignty, and, since its only limit is the earth, it may properly be termed *World Sovereignty*.

The objection may be made that this physical force has never been subjected to organization and has never been exerted, and that having remained without definite manifestation it is purely hypothetical and its existence theoretical rather than actual. But the existence of such supreme force is self-proving. Since each human being possesses a measure of bodily strength, the union of the physical strength of all the human beings in the world must represent the collective might of mankind. Divide that collective might unequally and a preponderance rests with a certain body of individuals and a lesser portion of such physical power with the remainder of the race. The possessors of the preponder-

ant amount of power, including as a factor intelligent coöperation, are humanly supreme in that they can enforce their collective will throughout the earth. That dominant body of individuals possesses the *World Sovereignty* and is itself the *World Sovereign*.

If the opinions of those writers, who maintain that the state possesses the sovereignty or that the state is preëxistent to sovereignty, are accepted as correct, any discussion of World Sovereignty prior to the actual organization of the entire human race into a universal political state would be illogical; but, following the conclusions reached in the preceding series of Notes, that there is a sovereign before there is a state, that the organization of a state is an act of sovereignty, and that the existence of a community is conclusive evidence of the existence therein of superior physical force, *i.e.*, of sovereignty, the very conception of a *World Community* compels the recognition of a World Sovereign and of World Sovereignty.

THE IDEA OF A WORLD STATE

The first positive and direct expression of World Sovereignty must of necessity be the organization of a *World State*, which presumably will be of a federal character for two reasons, first, because the world is already divided into organized groups of individuals forming political states, and, second, because the federal state is the most highly developed political organism of modern civilization. The idea of a World State is not new; in fact prior to Grotius the idea was general; but under the artificial sovereignty of the Middle Ages it was substantially an impossibility. Today, however, based upon a higher conception of sovereign authority and a more enlightened code of political ethics, the idea is gathering new force.

Bluntschli says:

It will take many centuries to realize the Universal State. But the longing for such an organized community of all nations has already revealed itself from time to time in the previous history of the world. Civilized Europe has already fixed her eye more firmly on this high aim. . . . Meanwhile unconquerable time itself works on unceasingly bringing the nations nearer to one another, and awaking the universal consciousness of the community of mankind; and this is the natural preparation for a common organization of the world. . . . Only in the universal empire will the true human state be revealed, and in it international law will attain a higher form and an assured existence. To the universal empire the particular states are related, as the nations to humanity.²

In the last sentence quoted the idea of the writer that the "universal empire" will have a federal organization is brought out, but, since he gives the state precedence of sovereignty, he could not logically consider World Sovereignty as existing until the World State is *in esse*. Accepting the conclusions reached in the previous Notes that sovereignty is coëxistent with the community, and that the state is one of the manifestations of sovereignty, it is impossible to recognize the Community of Mankind without acknowledging the existence of World Sovereignty.

² Bluntschli, *Theory of the State*, 3d Edition, pp. 26, 31, 32.

INDEPENDENCE OF STATES

This sovereignty, which as yet lacks positive and direct expression, may be seen by a survey, from the broader point of view, which has been assumed of the external sovereignty of a state. Independence is the outward manifestation of such sovereignty. As was said in the *Note upon Independence*,³ real sovereignty in a state must possess that attribute. This assertion needs no further proof of its correctness than the statement. When sovereignty is viewed from within the State, it is easy to understand and evident in the various phenomena of society; but, when two or more states, each with an independent sovereign, come into opposition so that the wills of their sovereigns do not harmonize, and each sovereign attempts to be independent and to exercise exclusive sovereignty, the state of affairs resulting is paradoxical, for manifestly two supreme authorities cannot exist within the same sphere.

Take, for example, the specific instance of two states territorially contiguous, one of which is physically stronger than the other and could, if it so willed and was not prevented by other states, destroy the sovereignty of its weaker neighbor by depriving it of independence.⁴ In the instance given, is not the weaker state *dependent* upon the volition of the more powerful for its independence? Or, if the more powerful is restrained from aggression by the fear that other states might intervene, is not the weaker state *dependent* upon the combined physical force of these other states for its independence? Can there be such a thing as *dependent* independence? Under such conditions, what becomes of the *reality* of the independence of the sovereign of the weaker state, and what becomes of the *reality* of its sovereignty?

The answers to these questions are obvious. The idea is thus stated by Bluntschli: "If a state is compelled to recognize the political superiority of another it loses its sovereignty and becomes subjected to the sovereignty of the latter" (Bluntschli, p. 506). And again: "If a state were responsible for the exercise of its sovereignty to another state, its sovereignty would thereby be limited" (*Ibid.*, p. 509).⁵ The conclusion is that, no matter how *real* sovereignty in a state may be when viewed from the standpoint of the state itself, *it is not*

³ This JOURNAL, Vol. 1, p. 297.

⁴ In this and in subsequent places where the sovereignty and independence of a state are spoken of, the phrases are used for the sake of brevity. In all such cases it should be understood that the sovereignty and independence of the sovereign of the state are intended.

⁵ "According to the definition of an independent political society which is stated or supposed by Hobbes in his excellent treatises on government, a society is not a society political and independent, unless it can maintain its independence, against attacks from without, by its own intrinsic or unaided strength. But if power to maintain its independence by its own intrinsic strength be a character or essential property of an independent political society, the name will scarcely apply to any existing society, or to any of the past societies which occur in the history of mankind. The weaker of such actual societies as are deemed political and independent, owe their precarious independence to positive international morality, and the mutual fears or jealousies of stronger communities. The most powerful of such actual societies as are deemed political and independent, could hardly maintain its independence, by its own intrinsic strength, against an extensive conspiracy of other independent nations." Austin, *Principles of Jurisprudence*, 5th Edition, London, 1885, p. 187.)

real in fact but artificial unless the sovereign of that particular state possesses the physical force which, if exercised, can compel obedience from all mankind throughout the world. Doubtless the sovereign of the Persian, the Macedonian, or the Roman Empire, as each in its turn attained the zenith of its glory and might, may have reasonably claimed real sovereignty even in the broader sense and maintained the claim against the united strength of all other peoples; but in later centuries the Saracens, Charlemagne, and Bonaparte attempted and failed to establish an empire and obtain universal sovereignty. In the past one hundred years no state has become so powerful as to hope, much less has had the temerity to assert, that it could hold its sovereignty supreme and independent against a coalition embracing the other states of the world.

ARTIFICIAL CHARACTER OF SOVEREIGNTY IN A STATE

It is evident from the foregoing that the sovereignty in every modern state lacks the essential of real sovereignty, namely independence. Sovereignty, as it exists in a state, stands in much the same relation to the supreme might of the world that civil liberty stands in relation to the sovereign power in a state. From the broader point of view, therefore, the sovereignty in a state is dependent upon the collective physical force of mankind, or rather upon the collective will of those, whether considered as political groups or as individuals, who possess the preponderance of such force, and who are because of such possession actually independent. In the case of this dominant body all the essential qualities and attributes of real sovereignty are present, but it is unorganized, undetermined, and necessarily variable, composed of a multitude of individuals who are members of numerous states and offset against one another by race, national allegiance, and other differences. But *what* individuals and *what* states enter into the composition of this sovereign body are equally uncertain from the fact that this World Sovereignty has never been directly exercised by the possessors or by an agent directly authorized by them to carry out their sovereign will.

The artificial character of the sovereignty in a state when compared with the reality of World Sovereignty, while demonstrable by abstract reasoning, may be also proved by reference to concrete facts.

History furnishes numerous instances of the loss and restoration of sovereignty in a state—lost through the exercise of physical force external to the state and superior to that within the state, and against the will of the sovereign of the state; and restored by the voluntary act of the possessor of the superior external force or under the coercive influence of other external forces, and not by the physical might within the state itself. Such evidence is conclusive of the fact that the sovereignty in a state is artificial and that the independence of its sovereign, though asserted by it and acknowledged by other states, is not real and self-maintained.

To illustrate the force of this evidence, a few examples will suffice.

An event in recent history belonging to this particular class of proof was the result of the Franco-German War in 1871. After French sovereignty and independence had been swept away by the victorious armies of Germany, the sovereignty and independence were restored by the conquerors in exchange for

the undertaking of the French Government to pay a large war indemnity and the cession of Alsace-Lorraine. This restoration was the voluntary act of the possessor of a physical force proven by actual demonstration to be superior to any such force within the French state. Clearly the sovereignty and independence of the latter rested for their continuance upon the will of the victor, or possibly upon the fear of Germany that continued possession would arouse the hostility of other European Powers. In either case, French sovereignty and independence lacked reality and were manifestly artificial.

A similar example of conquest and restoration was presented in the war between the United States and Mexico. The military forces of the United States overthrew the Mexican Government and acquired the sovereignty of the republic but it was voluntarily restored upon Mexico agreeing to certain conditions. Mexico could not have secured such restoration by its own power. Mexican sovereignty was, therefore, dependent upon the will of the conquerors; and, since it was dependent and not independent, it was artificial.

Another class of historical evidence, cumulative but not identical with the preceding, is that which is presented by the existence of such states as Belgium and Luxemburg, which have sovereigns apparently independent and supreme, because the sovereigns of the great European Powers by mutual agreement permit such independence upon the express understanding that in case of wars between the guarantors these states shall remain neutral.

None of these neutralized states possesses in itself sufficient physical force to maintain even for a brief period its sovereignty and independence in case it should be attacked by one of its powerful neighbors. They rely upon the jealousies existing between the surrounding nations to preserve their political and territorial integrity. Clearly the sovereignty in a state of this sort depends upon the collective will of foreign sovereigns, or upon their several sovereign wills acting separately but harmoniously to secure the same end.

Further evidence of the same character is derived from the political status of certain of the Balkan States and Hawaii prior to its annexation to the United States. It would be irrational to claim that in any one of these so-called independent states there is a sovereign capable of maintaining independence solely through the possession and exercise of physical force. It is evident from their history and from their present condition that such states exist as distinct self-governing communities solely because other states, whose political and commercial interests are involved, cannot agree that any of their number should extend its dominion over the territory of the lesser states and absorb its sovereignty over their people.

Similar proof may be seen in the present international condition of Turkey and China, whose helplessness among the nations has been long a recognized political fact, though it may not continue in the future.

The Turkish Empire, differing so widely in its governmental system, moral standard, and religious belief from the Christian nations of Europe, which are vastly more powerful than it is, continues as a so-called sovereign and independent state because of the rivalries of the European Powers, which view with distrust and disfavor any manifestation by one of their own number of an intent

The Turkish Empire, differing so widely in its governmental system, moral

to deprive the Ottomans of their sovereignty. Concerted action by the civilized Powers has become the established policy of Europe in dealing with Turkey.

The present physical weakness of China in spite of its immense population and great resources was demonstrated a few years ago during the Boxer outbreak. When at the close of that extraordinary event the Imperial Government was reestablished and Chinese sovereignty was restored by the victorious allies, that sovereignty was clearly dependent upon the consent of the various Powers, whose forces occupied Peking. That they voluntarily surrendered the sovereignty to the Chinese was because they preferred that it should be retained within the Chinese state rather than that it should be held by one or more of their own number who would become thereby dominant in the Far East. Again selfish interests are shown to be the controlling factor in maintaining the political independence of a state physically weak.

In fact, the conflicting ambitions and mutual suspicions of powerful nations, neutralizing each other and forming a constant menace to the covetous and aggressive, keep in equilibrium the political condition of the world, becoming thus the uncertain preservers and guardians of helpless states. The European international doctrine of the Balance of Power and the American national policy of the Monroe Doctrine are practical manifestations resulting from this universal spirit of international distrust, which is so potent a factor in the politics of the world.

From these illustrations it is apparent how artificial are the sovereignty and independence which are assigned by international usage to a state, feeble and powerless though it be to repel the hostile act of any one of the great national states of the world.

As has been said, no single state, however vast its resources and population, could under existing conditions successfully withstand the combined and organized opposition of the rest of the states in the world, any more than one individual member of a modern state could maintain his absolute liberty against the collective will of his fellow members. In each case superior physical strength is lacking to the individual state or person, and without superior physical strength the result cannot be accomplished.

It may be said then that every state, whether strong or weak, whether great or small, whether rich or poor, whether civilized or barbarous, is in a sense a protectorate, a ward of the other states of the world, holding its political powers of them and responsible to them for its international conduct. In a word, every state is a member of the *Community of Nations*, wherein resides World Sovereignty, and which in the fullness of time will become, through the positive expression of that sovereignty, an organized political union, a *Federal World State*.

EQUALITY OF NATIONS

Having reached this point in the discussion, and having seen that a bond of interdependence makes of the states of the world something more than a mere collection of separate and independent units, each moving irresponsibly in its own distinct sphere; having seen that they in fact form an embryonic

political state, analogy to the fully developed type of the state previously considered offers a reason for the hypothesis so universally adopted by publicists and governments, that *every nation is the equal of every other nation in the world*. From the consideration given to the character of independence and sovereignty in a state, it is evident that this cannot be an *actual* equality, a fact which has been forced upon some writers who have attempted to explain it by limiting the subject of equality, but the result has been destructive of the value of the assertion.

For example, the modification of the hypothesis by Lawrence is unsatisfactory although suggestive of the fiction on which it is founded. He says: "From the time of Grotius to the present day publicists have declared that all independent States are equal in the eyes of International Law. The equality they speak of is not an equality of power and influence, but of legal rights."⁶ Equality of this nature is purely ethical, for rights unsupported by actual power are only moral precepts, which may possess influence, but never positive force. An equality among sovereigns to be *real* must be an equality of might, otherwise it is artificial, an intellectual creation.

Nor can the equality of states affirmed by Wheaton, nor the sovereignty to which he refers, be considered *real*, even from his own statement, in which he says: "The sovereignty of a particular State is not impaired by its occasional obedience to the commands of other States, or even the habitual influence exercised by them over its councils."⁷ It is manifest that with such sovereignty as this, the equality and independence of sovereigns are entirely artificial, resting only upon a legal assumption. It is this assumption which analogy explains.

In discussing sovereignty from the point of view of the state, it was shown that in times of domestic peace individuals having certain qualifications attained through development are presumed to possess an equal share of the sovereignty of a single state, and that the same is true of states which as units composing a federal state are presumed to share equally in the federal sovereignty. The fiction of this assumption is proven when tested by the exercise of physical force, the ultimate appeal of the real sovereign. Since a war between two, three or four nations is no more destructive of the general peace of the world community than a conflict between a few individuals in a state is destructive of its domestic peace, the persistent international condition is that of peace, as no conflict of modern times has been of sufficient magnitude to constitute a World War, thereby imposing upon the Community of Nations a general condition of belligerency. As a result the assumption of equality in the possession of sovereign power during times of peace in the world, when a state possesses certain qualifications, such as a recognized sovereign and an organized and operative government, is never withheld from such a state in international intercourse.

It should always be borne in mind, nevertheless, that the equality of individuals in a state, the equality of states in a federal union, and the equality of nations in the Community of Nations are all artificial and based upon assumed qualities which can only be tested by the actual exercise of physical force. It

⁶ Lawrence, Principles of International Law, p. 241.

⁷ Wheaton, International Law, p. 45.

is true that a war between two states may demonstrate the relative amount of real power possessed by each, but, since the *world* is at peace, they remain to neutral states presumptively equal until the sovereignty of one is actually absorbed by the other. It matters not how great is the contest or how decisively victorious one of the belligerents may be, to the rest of the world the assumption of equality continues unaffected, for general peace prevails.

Thus, although the Community of Nations lacks the organization essential to make of it a political state, the individual nations, by general though independent consent and not by direct command of a World Sovereign, employ that fiction of equality which in a state relates to the possession by individuals of the sovereignty. In the Community of Nations this is applicable to the equality of nations in the possession of the World Sovereignty. This assumption, so firmly imbedded in the Law of Nations, is a conscious or unconscious recognition of the unity of the states of the world in the possession of a universal sovereignty; and it is, furthermore, a manifestation of the tendency of modern thought towards an organized World Community.

SUMMARY

To summarize the conclusions reached:

First.—There is possessed by a body of individuals in the world the physical might to compel absolute obedience from all other individuals in the world considered collectively, and from all individuals in the world considered separately.

Second.—This all-powerful body of individuals possesses therefore the real sovereignty of the world, the world being considered as a unit or a single and universal community.

Third.—The sovereignty in every state as now organized politically is artificial when viewed from the standpoint of the world as a single community; and such sovereignty depends for its sphere of operation and exercise upon the will of the body of individuals possessing the World Sovereignty.

Fourth.—Since only the sovereignty existing in a state has been directly exercised, World Sovereignty has not up to the present time been positively expressed. It remains passive through lack of harmony of purpose and unity of action by its possessors, and through the absence of proper channels of expression.

Fifth.—The nature of World Sovereignty in its present state of development is similar to that of the lesser sovereignty, which, viewed from the standpoint of the community or state, is real. The condition existing is analogous to that in a community, wherein the real sovereignty has never been exercised although its existence is certain. Such a community is unorganized, for organization is a positive exercise of real sovereignty.

THE LAW OF NATIONS.

The definition of a *Law* given in the Note in which was discussed the relation of sovereignty and law in a state was "A rule of human conduct emanating

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from the sovereign." In adapting this definition of Law in its relation to World Sovereignty there is presented this difficulty: the Community of Nations, being unorganized, that is, without a government, and therefore without an agent of the sovereign to formulate in terms and formally proclaim rules of human conduct, the will of the World Sovereign cannot find expression through the usual channel of enacted law, by which the sovereign will is announced in a state.

As a result of this condition, arising from the non-existence or non-development of a government in the Community of Nations clothed with legislative authority, the question may be reasonably and consistently asked, whether or not the body of rules known as the *Law of Nations* or *International Law* is in fact law in the common legal meaning of that word as applied to the rules of conduct issuing from the sovereign of a state, and can it be properly classified under that head.

As has been shown, there must exist from the nature of human society and the constant intercourse between nations a World Sovereignty, and necessarily a World Sovereign. A law to be law according to the definition given in these Notes must have sovereign authority behind it, whether it be a moral law given by a divine ruler or a statute law uttered by the governmental agent of the sovereign of a state. The Law of Nations, that is, World Law, must therefore emanate from the World Sovereign if it is indeed Law properly so-called. Since the will of the World Sovereign fails in positive and direct expression, it is necessary to determine, first, what that will is in regard to human conduct in the world, and, second, whether the body of rules which governments and publicists recognize as the Law of Nations, coincides with and actually expresses such sovereign will. If it is thus coincident and expressive then it is law in the legal sense; if it is not, then it is law only in name and not in fact.

NATURAL JUSTICE

It has been seen in the *Note upon Law in a State*,^s that law arising through the decrees of judicial tribunals, when not interpreting enacted laws, is based upon the rational presumption that the sovereign of the state is persistently desirous of directing human conduct in accordance with the principles of natural justice. Thus, although a case may be entirely novel, it is assumed by a municipal court, in the absence of enacted laws applicable to such case, that the sovereign will is in harmony with the principles of natural justice, and the court applying those principles as it understands them renders a decision, and by that act makes known the will of the sovereign and announces the law, since the passive acquiescence of the sovereign is equivalent to a command. The point to be noted is, that the law existed without formal enactment, the court being merely the agent for its announcement in terms.

It is upon a similar presumption and assumption that the great body of the Law of Nations is founded. The conditions in a state and in the Community of Nations are analogous. The principles of natural justice or absolute justice

^s This JOURNAL, Vol. 1, p. 317.

or strict justice (whichever name most accurately defines the moral intent to be constantly righteous towards others) are by civilized states assumed to be in accord with the dominant sentiment of the human race, that is, with the presumed will of the World Sovereign, except so far as repeated practice between governments has established a custom, in which case, as in that arising in a state, the custom overrules the abstract principle of natural justice. *Consuetudo vincit communem legem*. By these precepts sovereigns and their agents ought to be guided in their intercourse with one another as if the will of the World Sovereign had been declared in the exact terms of enacted law, even as in a state an individual is bound to respect the principles of natural justice in dealing with his fellows as a moral and political duty.

Under the English juridical system the source of the Common Law and of the Law of Nations is recognized as resting on the same assumption of sovereign intent, and the latter is on that account given legal force in the municipal courts of England. Blackstone says: "The Law of Nations (whenever any question arises which is properly the object of its jurisdiction) is here adopted to its full extent by the common law, and is held to be a part of the law of the land."⁹ Thus under the English system the principles of natural justice are applied both internally and externally to the state in the regulation of *all* human relations. A similar recognition of the legal character of the Law of Nations appears in the Constitution of the United States, though it was undoubtedly but the principle expressed by Blackstone reiterated.

CHARACTER OF THE LAW OF NATIONS

These rules of international conduct, which from the nature of their source are necessarily ethical, may vary according to the interpretation which is given to them; and, since there is no constituted authority representative of the World Sovereign to declare and apply them, the meaning placed upon them is dependent upon the moral standard of the sovereign of a state who invokes and sanctions them. These variations find expression in the practices and utterances of governments, and coincident interpretations are frequently set forth in treaties. Treaties, however, like customs, may form numerous variants of these principles; and though presumed to interpret the will of the World Sovereign, they are not necessarily reasonable, just, or ethical any more than are the customary law and the statutory law emanating from the sovereign of a state.

The relation of Treaties to the Law of Nations is well analyzed by Madison. He says:

They [treaties] may be considered as simply repealing or affirming the general law; they may be considered as making exceptions to the general law, which are to be a particular law between the parties themselves; they may be considered explanatory of the law of nations on points where its meaning is otherwise obscure or unsettled, in which case they are, first, a law between the parties themselves, and next, a sanction to the general law, according to the reasonableness of the explanation, and the number and character of the parties to it; lastly, treaties may be considered a voluntary or positive law of nations.¹⁰

⁹ Blackstone, Bk. 4, ch. 5.

¹⁰ Quoted in Wheaton's International Law, p. 39.

Until an established custom or usage of nations is changed, or the utterances of governments are disavowed, or treaties are denounced or permitted to lapse, the sovereigns of the states accepting them are bound by them or assumed to be so bound; but, like customary and statutory laws, these may be modified at will by the sovereign, and are similarly unstable and subject to variation as the relations between nations are affected by new conditions resulting from political and commercial changes and the influences of a progressive civilization upon international morality.

THE LAW OF NATIONS IS LAW IN THE LEGAL SENSE

From the foregoing consideration of the origin and character of the Law of Nations, it will be seen that it possesses the essential features of law as found in states, and particularly that branch of law which arises from the same source, natural justice; and, though but partially developed through the Lex of an established central government to act for the World Sovereign and to make formal declaration of the sovereign will, it has a quality of legality which is recognized and acknowledged by civilized states.

Civilized states, like civilized persons, recognize the need of law to regulate their intercourse and to preserve social order. Because a law issuing from a proper authority is not enforced, that fact does not deprive it of its legal status. It still remains a law until annulled by a definite expression of the sovereign will. The same is true of the rules of human conduct that originate in natural justice, and which are recognized by the individuals in a state as legally binding, even though they may not be enforced. They still remain laws in the legal sense.

Turning now to the wider field of the Community of Nations and the application of those principles of natural justice which affect the intercourse between nations and which are presumptively the will of the World Sovereign, the same proposition holds good. The fact that these principles are not enforced by a governmental agent directly delegated by the World Sovereign does not deprive them of their legal character or effect. They remain laws, and constitute a code of rules and a standard of right and justice, by which the external conduct of states should be judged, and in harmony with which governments should mould their foreign policies.

Without a superior, supernational government, the sovereign of each state becomes the censor of its own conduct, the self-constituted agent of the World Sovereign to carry out the sovereign will in so far as that will applies to itself, its government, and the members of its state.

DEVELOPMENT OF CERTAIN LAWS OF NATIONS

It is natural that along certain lines of conduct there has been a more general recognition of the collective will of the world than along others, and that as a result in regard to certain subjects the desire and intent of the World Sovereign have received a like interpretation by all civilized states. Such universal interpretation and application approximate, if they do not coincide with, enacted law.

Two prominent illustrations of this fully developed type of the Law of Nations may be cited; one, the universal declaration that piracy is a crime against the world; the other, the right and duty of all states to suppress the slave-trade, which is a crime against humanity. As to the criminality of these practices the sentiment of civilized peoples is today a unit.

Piracy has been for ages condemned in word if not in deed. "*Pirata est hostis humani generis*" wrote Coke (3 Inst., 113), though at the same time the Elizabethan seamen with piratical license were plundering the ships and colonies of Spain. The history of the Buccaneers and the exploits of the Barbary corsairs show that until a comparatively recent time there was so great a lack of harmony in idea and action by nations that there failed to be an effective expression of the will of the World Sovereign. With the beginning of the nineteenth century, however, the opposition became so universal that piracy practically disappeared from the seas, except on the western side of the Pacific.

In the case of the slave-trade, the legality of the traffic was generally accepted until the outburst of the spirit of individualism toward the close of the eighteenth century caused the civilized states of Europe to change radically their views upon the subject. Less than a hundred years ago the slaver plied his trade with little fear of molestation; and, although in a few states the traffic was denounced as immoral and by legislation declared criminal, there was no such general condemnation by the powerful states of the world as to warrant a government to extend its suppressive operations to others than its own nationals.

Under the influence of new ideas as to the rights of man and following the initiative of Great Britain, a new sentiment toward the institution of slavery became ascendant, and Christian states with practical unanimity prohibited their members from engaging in the trade, and by treaties agreed to suppress it upon the high seas. So universal was this prohibitive policy and so extensive were the treaty powers conferred, that there could be no reasonable doubt but that the moral sentiment of those controlling the physical strength of the world was hostile, not only to the slave-trade, but to slavery as well. This union of action and harmony of idea found definite expression in joint conventions by the principal nations of the world in 1885 in the Berlin General Act, and in 1890 in the Brussels General Act, by which they mutually agreed to suppress the trade both on land and on sea. The sentiment of those possessing the World Sovereignty is but another name for the World Sovereign's will under the influence of ethical principles, and the treaty recognition of such sentiment is but the formal interpretation and political sanction of such will.

As a result of this attitude of mankind toward these two great public crimes, the one destructive of the institution of property, the other, of personal liberty, piracy and the slave-trade wherever practiced are subject to punishment by any political authority apprehending the persons engaging therein irrespective of their nationality or allegiance. In a word, the pirate and the slave-trader are world-outlaws, and have been so declared by the manifest will of the World Sovereign.

INCREASING RECOGNITION OF WORLD SOVEREIGNTY AND WORLD LAW.

The international adoption of policies like those relating to piracy and the slave-trade is a manifestation of the existence of a sovereign will in the world, which is super-national and supreme. It is suggestive of the possibilities of the future. The influence of the collective opinion of nations operating throughout the Community of Nations compels state after state to recognize the superiority of World Sovereignty over the sovereignty in a state and consequently the superiority of law emanating from the higher authority over the municipal legal codes of states. This influence is forcing political rulers of nations to submit to the dictates of the World Sovereign rather than to incur the condemnation, if not the hostility, of the great civilized states, the most powerful and most influential members of the Community of Nations. Thus far such disfavor is the punishment which follows the violation of those rules of the Law of Nations, the interpretation of which is substantially undisputed and which are confined chiefly to humanity of conduct.¹¹ The fear of this disfavor or condemnation, though not an actual force, has become a powerful influence in directing international intercourse.

As yet such declarations of the sovereign will relate to that great common possession of mankind, the high seas, or to the conduct of hostilities between belligerent states in the futile attempt to make war humane. But such historical events as the intervention by foreign Powers in behalf of Greece in 1827 and in behalf of the Christians of Mount Lebanon in 1860, and the menacing protests of the great nations to the Ottoman Government against the treatment of the Armenians, are declarations of executive authority superior to national authority assumed in the name of humanity—or more properly in the name of the World Sovereign—which indicate a more perfect unity among nations for the enforcement of the sovereign will of mankind.

DEVELOPMENT OF GOVERNMENTAL FUNCTIONS IN THE COMMUNITY OF NATIONS

The beginnings of the three distinct branches of government in a state, as it emerges from the chaotic condition of barbarous individualism and becomes a political organism, seem to be simultaneous. The mind cannot conceive of the determination, the interpretation, and the application of the sovereign will being separated in the expression of sovereignty. That is, the expression of sovereignty, though it be a single and distinct act, necessarily involves the three functions of political government of which all relate to law. Therefore, whatever may be the development of one branch of government, the other two branches should be in a similar state of development. If the legislative method is crude and simple, the executive and judicial methods will be equally crude and simple; and, conversely, if the legislative method is complex, the executive and judicial methods will be found to be complex. The three branches and functions of government develop along parallel lines.

¹¹ "The duties which are imposed by these rules [of international morality] are enforced by moral sanctions, by apprehension on the part of sovereigns and nations of incurring the hostility of other States, in case they should violate maxims generally received and respected by the civilized world." (Wheaton, preface, p. xcii.)

This is illustrated in the present stage of the evolution of World Sovereignty, which, being in the process of political formation, is simple, crude, and almost barbarous. In the Community of Nations, selfish individualism controls the actions of states. The executive function is rudimentary, giving but occasional and feeble evidence of existence. The judicial function is unformed; in its place is the barbaric method of trial by combat, or the more rational though primitive mode of voluntary submission to arbitration. And the legislative function, though giving evidence of development in the increasing number of international assemblages, is supplanted by the assumption that the will of the World Sovereign coincides with customs, usages and the principles of natural justice.

THE LAW OF NATIONS, A COMPLETE LEGAL CODE

Until the time is ripe for the establishment of a central government to announce, interpret, and enforce World Law, the express will of the World Sovereign, the Law of Nations will lack that great branch of Constitutional Law which relates to the form, powers, and duties of government. It, however, contains that other branch of Constitutional Law which in a single state deals with civil or individual liberty, and in a federal state with state liberty. In the Community of Nations this branch of law relates to national independence. With this exception as to governmental institutions, the Law of Nations is as complete in subject-matter as the body of Municipal Law in the most highly developed state, though there is wanting that consistency and harmony of interpretation and application which are the products of sovereignty when exercised through the agency of a fully organized and permanent government.

Resting upon natural justice, like the Common Law of England which furnishes a complete body of laws applicable to every relation existing in human society, the Law of Nations is equally complete in its rules as to the relations existing in the society of nations. The rules of the Common Law, however, though limitless in source and application, require two things before they can be declared in terms—first, a controversy as to rights, and, second, a judicial determination of such controversy. It is not so with the rules of the Law of Nations; they may be and are declared by publicists and governments in the abstract without concrete cases arising. Thus in one sense the International Code is much more comprehensive and complete than the Common Law, though in fact the controversies between individuals are so numerous and so varied that a case is hardly conceivable in which the principles involved have not been passed upon and declared by the courts. The result is that the Common Law as it exists today is founded almost entirely upon precedent, while the Law of Nations is based immediately upon morality, equity, and reason, those qualities which should be preëminent in the Universal Sovereign of mankind, the perfection of whose will should find manifestation in the laws emanating from the highest political authority in the world, a code perfect in righteousness.

OUTLINE OF A PLAN FOR THE MAINTENANCE OF INTERNATIONAL PEACE, BASED UPON THE PROGRESSIVE DEVELOPMENT OF ACCEPTED METHODS¹

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1. GENERAL ARBITRATION FOR ARBITRAL DISPUTES

International arbitration is the oldest and most favored method of settling disputes between nations when diplomacy fails. The Hague Conventions of 1899 and 1907 for the Peaceful Settlement of International Disputes both declare that "In questions of a legal nature, and especially in the interpretation or application of international conventions, arbitration is recognized by the Contracting Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle." (Art. 16 of the Convention of 1899, and Art. 38 of the Convention of 1907.)

The opposition of Germany individually and as head of the Triple Alliance prevented the adoption of a general treaty of arbitration at both the Hague Conferences; but outside the Conferences the other nations sought to give effect to the spirit of the foregoing declaration by concluding separate treaties of arbitration pursuant to its terms. Numbers of such treaties have been negotiated, the signatories including 37 nations, among them all the principal belligerents in the present war.²

At the present Peace Conference, Germany will not be in the position effectively to oppose the wishes of the civilized world, as she was and did at The Hague. It is submitted, therefore, that the logical step for the Allies to take is to do now what they so earnestly desired to do but were prevented by Germany from doing in 1907, namely, conclude a general treaty of compulsory arbitration of arbitral disputes, using as a model the separate treaties now in force between most of them. By using a formula already familiar to and accepted by the contracting parties, objections to the extent or meaning of the covenant are likely to be obviated in the Peace Conference, as well as in the national legislative bodies whose consent to ratification may be necessary in some countries.

The provision more generally used to prescribe the scope of the arbitral jurisdiction under these treaties follows closely the language of the articles of the Hague Conventions, above quoted, and is commonly used by the United

¹ Prepared at Paris, December, 1918.

² This JOURNAL, Vol. 2, pp. 824-826. *

States and the other great Powers in the separate treaties between them. It reads as follows:

Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention of the 29th July, 1899; provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting states, and do not concern the interests of third parties.

Treaties containing the above article have been concluded by the following Powers parties to the present Peace Conference:

Austria-Hungary with Great Britain, Portugal, Switzerland, United States.
 Brazil with China, Great Britain, United States, Venezuela, Cuba.
 China with Brazil and the United States.
 France with Denmark, Great Britain, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United States.
 Germany with Great Britain.
 Italy with France, Great Britain, Portugal, Switzerland, United States.
 Japan with United States.
 Portugal with Austria-Hungary, France, Great Britain, Italy, Norway, Sweden, Switzerland, United States.
 Great Britain with Austria-Hungary, Denmark, Brazil, Colombia, France, Germany, Italy, Netherlands, Norway, Sweden, Portugal, Spain, Switzerland, United States.
 United States with Austria-Hungary, Brazil, China, Costa Rica, Denmark, Ecuador, France, Great Britain, Haiti, Italy, Japan, Mexico, Netherlands, Norway, Portugal, Paraguay, Peru, Salvador, Spain, Sweden, Switzerland, Uruguay.

The foregoing data are taken from the treaties published from time to time in this JOURNAL and are not claimed to be complete. It may be that an examination of other treaty collections will bring to light additional treaties of this character.

2. INTERNATIONAL COMMISSIONS OF INQUIRY FOR NON-ARBITRAL DISPUTES

It has probably been observed with some misgiving that the foregoing suggestion for a general arbitration treaty retains the usual exceptions reserving from arbitration differences which may affect the vital interests, independence or honor of the contracting states. The retention of these exceptions, or the substitution of some other proviso of like import, is, however, regarded as most important and necessary, for it is believed improbable that any general arbitration treaty broader in scope than the separate arbitration treaties now in force would, even if agreed to by the peace delegates, be ratified, especially by the United States. Ample warrant for this statement may be found in the unhappy fate of the so-called Taft Arbitration Treaties of 1911 between the

United States, Great Britain, and France, which attempted to eliminate these exceptions of vital interests, honor and independence by submitting the justifiability of such disputes to a body other than the United States Senate.³

Mr. Taft's successor has been no less solicitous for the cause of international peace, but that he has been more practical is demonstrated by his success with a different policy, as the result of which the United States has negotiated and ratified a long series of treaties with many nations, which treaties, although they do not provide for the arbitration of all differences without exception, materially reduce the chances of war growing out of differences coming within the exceptions of vital interests, honor, and independence. This has been accomplished by agreeing that "All disputes of every nature whatsoever, to the settlement of which previous arbitration treaties or agreements do not apply in their terms or are not applied in fact," shall be referred for investigation and report to an international commission of inquiry, the contracting parties further agreeing not to declare war or begin hostilities during the investigation of the commission and before its report is submitted.

Such treaties are now in force between the United States and twenty other nations, namely: Bolivia, Brazil, Chile, China, Costa Rica, Denmark, Ecuador, France, Great Britain, Guatemala, Honduras, Italy, Norway, Paraguay, Peru, Portugal, Russia, Spain, Sweden, and Uruguay. Half as many others have been signed and are in the slow processes of diplomacy toward completion. The principal belligerents with which the United States is associated, it will be noted, are among the nations with which these treaties are now in force with the United States. The reason for the non-appearance of Germany in the list of concluded treaties, after its acceptance of the plan in principle, is now known to have been Germany's unwillingness to forego what it believed to be its greatest asset in war, namely, a sudden attack.⁴

It is submitted that no more appropriate proposal for reducing the possibility of future wars over differences of a non-arbitral nature could be submitted to the Peace Conference by the United States for general acceptance by the nations, than its own plan already generally accepted and in force with many of them separately. For the separate commissions provided in each of the American treaties, the general treaty might substitute the International Commission of Inquiry whose organization and procedure are already prescribed in the Hague Conventions for limited classes of cases, subject to such changes or amendments as may be deemed necessary.

The following is, therefore, tentatively suggested as the second article of the proposed general peace treaty:

The high contracting parties agree that all disputes between them, of every nature whatsoever, other than disputes the settlement of which is provided for

³ For the report of the Committee on Foreign Relations strongly objecting to this feature of the Taft Treaties on the ground that it violated the Constitution of the United States by attempting to delegate the treaty-making prerogatives of the Senate to an outside body, see this JOURNAL, Vol. 6, page 167 at page 172. For the final amendments made to the treaties by the Senate, which practically made it impossible for President Taft to suggest their ratification to the other governments, see *ibid.*, page 460.

⁴ Gerard's *My Four Years in Germany*, p. 61.

and in fact achieved under Article I of the present convention, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to an international commission of inquiry, to be constituted in the manner prescribed by the Hague Convention of October 18, 1907; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

3. PROCEDURE

We have now provided for the arbitration of certain classes of international differences, and for a delay in hostilities while all other differences are being investigated and reported upon by an international commission. Both procedures are already in force in many separate treaties, and the only merit of the present suggestion is that they be combined in a general treaty between all the parties to the Peace Conference so as to bring within their scope nations which may not have entered into such agreements with all the other members of the conference, and to substitute for the international obligation between two states contained in the separate treaty, an international covenant between each contracting state and all the other states party to the agreement. A breach, or an attempted breach, of the treaty would thus become a matter of interest to all the signatories of the international covenant instead of a local matter between the two signatures in dispute.

It now seems advisable to go further and provide some procedure for establishing for the information of all the contracting parties the exact attitude of each nation toward a dispute in which it may become involved with another nation, all being parties to the international agreement. For this purpose, it is believed that the easiest method would be to make use of the International Bureau, established at The Hague by the conventions of 1899 and 1907, as a clerk of court's office for filing what may be called the complaint and pleadings of the disputant nations. It might be provided that, whenever a dispute arises, whether of an arbitral or non-arbitral nature, and, therefore, whether falling within either of the articles previously suggested for disputes of these classes, either contracting party shall have the right to request that the case be arbitrated under Article I of the convention. The defendant nation may accept arbitration and the case will then proceed according to the arbitral procedure prescribed in the Hague Conventions. The defendant state may, however, decline to arbitrate on the ground that the question involves its vital interests, honor, or independence. In that event, the complaining state may demand that the case be submitted to investigation and report to an international commission of inquiry, and the defendant shall be obliged so to refer the case, and the stipulations of Article 2 of the international covenant will come into operation.

All the pleadings of both parties to the dispute should be made through the International Bureau, which will transmit a copy to the other party to the case, and copies to all the signatories of the international convention, who should have the liberty to give them publicity. Such action will go far toward removing the evil effects of secret diplomacy after a dispute has reached the stage where it may be the cause of war.

4. SANCTION

Should the foregoing proposals be agreed upon in a general treaty, it is believed that the honor of nations, supported by a powerful public opinion against resort to war, will be sufficient to induce disputing nations to comply with the treaty. But grave doubt now exists everywhere as to the effectiveness of international agreements backed alone by the honor of nations or public opinion. An urgent demand is made, which statesmen may not feel at liberty to disregard, that some more effective means be devised for preventing the violation of international agreements. All nations seem inclined to agree in principle that some such safeguard should be provided, and many suggestions have been brought forward, including leagues of nations, an international police, economic boycotts, disarmament, etc., but none seems to have met with sufficient favor to lead to a hope of its general acceptance.

Lacking agreement upon a more definite plan, it is submitted that the next best thing to do is for the nations to agree in general terms that in case a contracting party declines to arbitrate or to submit a question to an international inquiry, the other nations parties to the international agreement will use the means at their disposal for maintaining the *status quo* or restoring it until the arbitration or inquiry has taken place. The agreement should further provide that the means to be employed shall be agreed upon in concert according to the circumstances of each case as it arises. These means may be either pacific or non-pacific, accordingly as the nations may agree in each case. Such stipulations would seem to avoid what seem to be the insuperable obstacles to the creation of an international executive or to the pledging in advance of definite military, economic, or other contributions to be applied under circumstances which it is now impossible to foresee. But they will be sufficient, it is believed, to serve formal notice upon all prospective war-makers that the rest of the world is interested in seeing to it that the international agencies established to prevent the disturbance of the world's peace are made use of, and that the nations as a whole will consider and adopt the most appropriate means for enforcing the international agreement that the circumstances of the particular case may indicate.

In order to make this Convention Establishing an International Union for Arbitration or International Inquiry world-wide in its application, it should contain a clause permitting neutrals in the present war to adhere to it.

It is believed that in the foregoing suggestions may be found the germ of the international organization to which President Wilson alluded in the following paragraph from his address at the Sorbonne on December 21, 1918:

My conception of the League of Nations is just this, that it shall operate as the organized moral force of men throughout the world, and that whenever or wherever wrong and aggression are planned or contemplated, this searching light of conscience will be turned upon them and men everywhere will ask, "What are the purposes that you hold in your heart against the fortunes of the world?" Just a little exposure will settle most questions! If the Central Powers had dared to discuss the purposes of this war for a single fortnight, it never would have happened, and if, as should be, they were forced to discuss it for a year, war would have been inconceivable.

THE JONES ACT AND THE DENUNCIATION OF TREATIES

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Section 34 of the Merchant Marine Act, commonly called the Jones Act, approved by the President, June 5, 1920, is as follows:

In the judgment of Congress, articles or provisions in treaties or conventions to which the United States is a party, which restrict the right of the United States to impose discriminating customs duties on imports entering the United States in foreign vessels and in vessels of the United States, and which also restrict the right of the United States to impose discriminatory tonnage dues on foreign vessels and on vessels of the United States entering the United States should be terminated, and the President is hereby authorized and directed within ninety days after this Act becomes law to give notice to the several governments, respectively, parties to such treaties or conventions, that so much thereof as imposes any such restriction on the United States will terminate on the expiration of such periods as may be required for the giving of such notice by the provisions of such treaties or conventions.

The period of ninety days thus specified expired September 5 without any such notices of termination by the President. In explanation of the failure to act, the Secretary of State issued, September 25, the following statement:

The Department of State has been informed by the President that he does not deem the direction contained in section 34 of the so-called Merchant Marine Act an exercise of any constitutional power possessed by Congress.

Under the provisions of the section referred to, the President was directed within ninety days after the act became law to notify the several governments with whom the United States had entered into commercial treaties that this country elected to terminate so much of said treaties as restricted the right of the United States to impose discriminating customs duties on imports and discriminating tonnage dues, according as the carrier were domestic or foreign, quite regardless of the fact that these restrictions are mutual, operating equally upon the other governments which are parties to the treaties, and quite regardless also of the further fact that the treaties contain no provisions for their termination in the manner contemplated by Congress. The President, therefore, considers it misleading to speak of the "termination" of the restrictive clauses of such treaties. The action sought to be imposed upon the Executive would amount to nothing less than the breach or violation of said treaties, which are thirty-two in number, and cover every point of contact and mutual dependence which constitute the modern relations between friendly states. Such a course would be wholly irreconcilable with the historical respect which the United States has shown for its international engagements and would falsify every profession of our belief in the binding force and the reciprocal obligation of treaties in general.¹

This refusal of the President to act as "authorized and directed" by Congress upon the ground that Congress has exceeded its powers, as well as upon

¹*New York Times*, September 27, 1920.

grounds of international policy, raises in a slightly different form the question of the respective spheres of the President and Congress relative to the termination of treaties.² Owing to the well-known dual situation of treaties under the Constitution, first as international obligations and second as statements of federal law, it is obvious that by Congressional act the provisions of a treaty prior in date may be superseded by way of amendment or repeal as such federal law by Congressional enactment. Such an enactment operating *ex proprio vigore* would have the result, not to abrogate the treaty, but to violate it. On the other hand, a treaty may not only create a new international obligation but modify, by way of amendment or repeal, a prior expression of the legislative will as expressed by Congress.

In but one instance has Congress assumed to declare a treaty void, when in 1798 it resolved that "the United States are of right freed and exonerated from the stipulations of the treaties [with France] . . . and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States." Mr. Crandall states that in the United States some doubt has existed as to what body is authorized to give notice of the abrogation of treaties. "So far as a treaty is a mere compact between nations, or so far as it operates *ipso facto* as a law of the land, it would seem that the President should have the power, with the concurrence of two-thirds of the Senate, to give notice of its termination. There is no doubt that he may in the same way replace it with another treaty."³ Mr. Butler says that Congress by act or resolution can abrogate a treaty and thereby render futile the treaty-making power as exercised by the constitutional authorities.⁴ Reviewing the precedents, Professor Corwin concludes that some limited power of treaty abrogation is necessarily attributable to the President. Confusion seems to have arisen because of the loose way in which the word "abrogation" is used. The abrogation of a treaty is an act which is international in character, and where, as is almost universal in modern commercial treaties, notwithstanding Mr. Colby's statement, the termination of a treaty may be accomplished by notice given, abrogation is, or may be, a unilateral act. Even so, it is still international and can be accomplished only by that instrumentality of the state which is charged with maintaining relations, or of sustaining official international contacts. That the only instrumentality for maintaining international contacts under our system is the President, through the Department of State, has been accepted from the beginning.

The treaties with France which Congress declared no longer binding upon the government or citizens of the United States were in terms perpetual and contained no provisions for termination by notice. No act of an international character by President Adams seemed to be necessary in order to abrogate the treaties which Congress declared void. Indeed, there were those who held that the act was tantamount, or at least in connection with various doings of France,

² See Crandall, *Treaties, Their Making and Enforcement*, 2nd edition, 458-462; Butler, *The Treaty-Making Power*, 311, 384; Corwin, *The President's Control of Foreign Relations*, 109-116; Moore, *International Law Digest*, V, 771.

³ Crandall, 461.

⁴ Butler, 311.

ancillary to the creation of a state of war between the United States and France. Judge Sewall, then a representative from Massachusetts, remarked upon the passage of the bill: "It is certainly a novel doctrine to pass a law declaring treaties void, but the necessity arose from the peculiar situation of the country. In most countries it is in the power of the Chief Magistrate to suspend a treaty whenever he thinks proper; here Congress only has that power."⁵ So early, therefore, do we find the idea that Congress alone can abrogate treaties. Never since 1798 has Congress bluntly declared void an international obligation, although it has legislated in the face of international obligations.

Probably contrary to Polk's desire, as he had asked that provision be made by law to terminate the Oregon convention of 1827, Congress inserted the clause "in his discretion," when passing the joint resolution of 1846 authorizing the President to give notice of the abrogation of that convention. Thus it threw the responsibility upon the President for the international act, giving him the support of its "authorization."

Congressional "authorization" was superseded by senatorial authorization in the next decade when Pierce informed Congress that he "deemed it expedient that the contemplated notice should be given to Denmark," for the abrogation of the commercial treaty of 1826. Thus freed, the claim of the United States to be exempt from the Sound Dues might not be embarrassed. The Senate, acting as upon a treaty submitted to it, resolved that the President was authorized in his discretion to give the necessary notice. Did the "authorization" proceed from the legislative grant or from the Senate's power in treaty-making? Pierce gave the notice "in pursuance of the authority conferred" by the Senate. Sumner, fearing that the power of the Senate over treaties might be made use of to cause the abrogation of those sections of the Webster-Ashburton Treaty which provided for a joint-cruising arrangement against the slave-trade, attacked the action of the Senate. Upon the theory that a treaty is the supreme law of the land, Sumner insisted that it could not be "set aside, terminated, superseded, disclaimed, repealed, or abrogated, except by the exercise of the highest power known to the Constitution, embodying the collected will of the whole people in a legislative act, under the sanction of the Senate and House of Representatives of the United States in Congress assembled. . . . The President, by and with the advice and consent of the Senate, may make treaties, but there is nothing in our Constitution conferring upon them the power to abrogate treaties. To attribute to them any such power is to go beyond the Constitution."⁶ Sumner's biographer concludes that his speeches upon this occasion aided "in establishing the rule that treaties can be abrogated only by act of Congress."⁷ No rule of this sort has ever been established.

Quite contrary to such an alleged rule was the position taken by Lincoln in 1854 on the giving of notice of the termination of the Great Lakes Agreement of 1817. Here a resolution authorizing the President to give the required notice passed the House and failed in the Senate. Nevertheless, Seward gave notice to Great Britain that the agreement would be terminated. Congress thereupon passed a joint resolution "adopting and ratifying" the notice given "as

⁵ *Annals of Congress*, II, 2120.

⁶ *Works*, IV, 98-120.

⁷ Pierce's "Sumner," III, 425

if the same had been authorized by Congress." That this retroactive "authorization" did not operate to annul the agreement or to limit executive discretion is apparent from the sequel. Seward withdrew the notice before the expiration of the required six months and the agreement continued to be in force.

The bill passed by Congress in 1880 restricting Chinese immigration provided more directly for the abrogation of repugnant articles in the Burlingame Treaty than by "authorizing" the President to give notice of termination. The terms of the bill were that the President should "immediately, on the approval of this act, give notice to the Government of China of the abrogation" of the repugnant articles. President Hayes vetoed the bill, not so much on account of alleged legislative infringement of his powers, but rather because of treaty-faith and the character of the treaty obligation. The Burlingame Treaty contained no provision for termination by notice. Hayes's veto was as much directed against the articles of the bill which contravened the treaty as against the requirement that parts only of the treaty be abrogated. The sole bulwark against the threatened treaty-breach was, therefore, the executive veto. "The authority of Congress to terminate a treaty with a foreign Power," the veto message states, "by expressing the will of the nation no longer to adhere to it, is as free from controversy under our Constitution as is the further proposition that the power of making new treaties or modifying existing treaties is not lodged by the Constitution in Congress, but in the President, by and with the advice and consent of the Senate." Hayes thus seems to assert that the treaty-abrogating power is vested in Congress, and the treaty-making and modifying power in the President and Senate. He took no exception to the mandatory language of the bill, but rather admitted that Congress had the power to enjoin such executive action.

When in 1899 Switzerland claimed that the most-favored-nation clause in the commercial treaty of 1850 had an unlimited meaning, Secretary Hay directed our minister at Berne to give notice of the termination of Articles VIII to XII thereof. The notice as given was that it was "the intention of the United States to arrest the operations of the convention" so far as those articles were concerned. Switzerland "accepted" the notice. No ratifying action by Congress or by the Senate followed. Indeed President McKinley did not refer to the matter in his subsequent message to Congress.

The giving of notice by the Executive without authorization by Congress or by the Senate was the method made use of by President Taft in abrogating the Russian Treaty of 1832. A joint resolution, in a form disliked by the President, providing for the abrogation of the treaty passed the House. While it was held up in the Senate, the President proceeded to give notice to Russia and then notified the Senate of his action: "I now communicate this action to the Senate as a part of the treaty-making power of this government, with a view to its ratification and approval." The course of ratification, however, did not follow in accordance with the President's theory. The objectionable House resolution was amended by the Senate and the ratification of the President's action was by a joint resolution adopting and ratifying the notice given, thus following the precedent of 1864.

The Seamen's Act of 1915, commonly known as the La Follette Act, provided for the termination of treaties in conflict with it, but in language essentially different from earlier Congressional directions as to notice:

That, *in the judgment of Congress*, articles in treaties and conventions of the United States, insofar as they provide for the arrest and imprisonment of officers and seamen deserting . . . and any other treaty provision in conflict with this Act *ought to be terminated*, and to this end the President be, and he is hereby, requested and directed, within ninety days after the passage of this Act, to give notice to the several governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign governments will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions.

It is obvious that so far as municipal legal validity and vigor went, the La Follette Act controlled. This provision did not attempt directly to annul treaties. It was the judgment of Congress that treaties in conflict ought to be terminated, and the President was "instructed and directed" to give the necessary notices in order that there might be no breaches of treaties because of the provisions of the Congressional act. Good statutory draftsmanship might have inspired a specific designation of the treaties involved, but it would perhaps have raised questions of treaty interpretation. The La Follette Act was approved by President Wilson, and it was announced by the Department of State within ninety days thereafter that notices had been given to Austria-Hungary, Belgium, Brazil, China, Colombia, Denmark, France, Great Britain, Greece, Italy, the Netherlands, Rumania, Spain, Sweden, Norway, the Congo, and Tonga. By July of the following year announcement was made that a considerable number of the countries had accepted the notices and agreed to the elimination of the objectionable stipulations. The similarity between Section 16 of the La Follette Act and Section 34 of the Jones Act is obvious. One is evidently copied from the other. The former "instructed and directed" the President to give notice, while the Jones Act "authorized and directed" him. The Jones Act was likewise approved by the President, but there is no principle of legal estoppel by which he is bound by his approval of the act to carry out any provisions which he might hold to have been outside the powers of Congress. Like President Hayes, he might have vetoed the bill upon the grounds of policy and also of unconstitutionality. The prime purpose of the veto, as Hamilton said, is to save the Executive from being overridden by Congress. The La Follette Act was not vetoed as an invasion of executive power and no exception was taken to the "direction" of the President by Congress.

There remains the question, can the President be forced to follow the instructions of Congress? Certainly the courts could, or would, not do so. Certainly Congress cannot. Therefore the treaties remain in force as international obligations. The legislative intent to force abrogation is not clear. Yet in the extent to which the Jones Act may contravene the provisions of our commercial treaties, we are face to face with breaches of these obligations. As none but those which contain provisions for termination by notice are involved in clause 34, it would seem that the position of the President in refusing to give notice makes a breach certain, or at least possible, where it could have been avoided.

While, then, it was within the President's discretion as to whether he would give notice or not, the position actually taken cannot operate to save the country from the charge of failing to observe its international agreements.

Without assuming to decide the extent to which the provisions of the Jones Act, aside from section 34, are in contravention of our commercial treaties (a matter for future judicial determination), and without in any sense affirming the wisdom of these legislative provisions, it remains clear that the act provided a method by which breaches of international obligations might be avoided. This method the President is unwilling to accept. If, then, there be irreconcilable conflict between the substantive provisions of the act and our commercial treaties, the position of the President will result, not in the observance of our treaty obligations, but in their breach. It seems to be within the power of the President to terminate treaties by giving notice on his own motion without previous Congressional or Senatorial action. It would seem, on the other hand, that the President cannot be forced by Congress or by the Senate to perform the international act of giving notice. It is observable, however, that in practice there has previously been no such difference of opinion between the President and Congress as to the termination of treaties so as to result in an *impasse*; and that the successful handling of international affairs rests, not so much upon questions of constitutional power, as upon the coöperation of functions and instrumentalities, particularly in those matters having a two-fold aspect, the one international, the other domestic. As there cannot be a clear line of cleavage between the two, or rather as the one class actually or potentially involves the other, coöperation and not separation of functions is necessary.

THE REFUSAL OF THE PRESIDENT TO GIVE NOTICE OF TERMINA-
TION OF CERTAIN TREATY PROVISIONS UNDER
THE JONES ACT

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There has been much discussion, in the public press and elsewhere, of the refusal of the President to give notice, pursuant to Sec. 34 of the Merchant Marine Act of June 5, 1920, of the termination of so much of the treaties with various foreign governments as restricts the right of the United States to impose discriminating customs duties on imports in foreign vessels and discriminatory tonnage dues on foreign vessels entering the United States. So far as this discussion is concerned with the proposed policy of assisting the American merchant marine by thus discriminating against foreign shipping, it is not within the province of this comment to venture an opinion. So far, however, as criticism has been directed against this action of the President upon the ground that in thus failing or refusing to carry out this direction of Congress he has exceeded his constitutional rights, an interesting and important question of constitutional law, affecting international relations, is presented. Much of the criticism is based upon an apparent confusion of thought in regard to the respective functions of the President and Congress in making treaties, terminating treaties, carrying out treaties, and proceeding in contravention of treaties; and also upon a failure to distinguish between the termination of a treaty as a whole and the termination or elimination of a particular provision of a treaty.

There is no dispute that the President negotiates treaties, and enters into them by and with the advice and consent of the Senate. Congress may make recommendations on this subject, but it has neither legal nor actual power to compel the negotiation or making of a treaty. On the other hand, where legislation is necessary to carry out the provisions of a treaty, the President cannot compel Congress to act. In other words, the practical power of refusing to abide by a treaty is necessarily in the hands of Congress. In like manner, Congress may enact legislation inconsistent with an existing treaty, and such legislation is controlling upon all courts and officers of the United States, whatever may be its effect upon the international obligations and responsibilities of the country.

There is also precedent for the termination by Congressional action of a treaty as a whole, either pursuant to a power of termination reserved in the treaty itself or otherwise. Such action is simply notice to the other party that

the United States elects to terminate, or refuses longer to recognize any obligations under, the treaty thus abrogated.

The termination of particular provisions of a treaty, however, rests upon a different basis. The abrogation of a treaty as a whole is analogous to the cancellation of a contract; the elimination of certain provisions, while the rest are retained, is the negotiation of a new agreement. One party to a compact may say, "I refuse longer to be bound and our agreement is at an end," and take the consequences; but he cannot say of right, "I refuse longer to be bound in one respect, but I will abide by and hold you to the remaining obligations," and impose this modified agreement upon the other party. In a treaty, as in any other contract, *all* of the obligations of one party furnish the consideration for *all* of the promises of the other, and a mutual obligation on one point, which one party may be ready to waive, may be vital to the other. Therefore the action of Congress in passing Sec. 34 of the Jones Act was equivalent to a direction to the President to negotiate certain treaty modifications; that is to say, to make new treaties. This is beyond the power of Congress.

Congress could have embodied the imposition of discriminatory duties and tonnage dues in the Act, and, while this would have been a breach of existing treaty provisions, it would have been controlling upon the other branches of the government. It could have directed that notice of such action be given to the foreign governments affected, and that the discriminatory duties and dues should become effective at the end of a certain time thereafter. This was the method followed under the La Follette Seamen's Act of March 4, 1915, in regard to the arrest of deserting seamen. In the present case, Congress merely sought to clear the field for undetermined future action, and for this purpose in effect directed the President to procure the consent of the foreign nations adversely affected to the elimination of treaty provisions inconsistent with such freedom of future action, while maintaining in force all the other treaty obligations between the United States and such foreign nations. The President has merely refrained from attempting to negotiate the new treaty relations thus proposed.

It has been suggested that because the President signed the bill he was bound to carry out the directions of Sec. 34. Sec. 36, however, expressly contemplated the possible partial unconstitutionality or invalidity of the Act. Sec. 34 contains no affirmative legislation, but is in essence merely an expression of opinion by Congress as to the expediency of complete freedom of action in regard to certain possible future legislation, and is in no way necessary to the carrying out of the remainder of the Act, which establishes a new system for the regulation of the American merchant marine. It may well be that the President deemed it best that that system be put into operation without delay, and that the whole question of discriminatory duties and dues and their effect upon international relations should be left in abeyance until Congress should determine upon the policy of the nation in this regard and take definite and affirmative action thereon. Why should the area of potential international friction be increased in the manner proposed when it was still possible that Congress might never determine to impose discriminatory duties and dues?

The basic question is not a new one. It was discussed at length by President

Hayes in his message of March 1, 1879, vetoing a bill directing the abrogation of Articles V and VI of the treaty with China of July 28, 1868, in which he said:

The bill before me does not enjoin upon the President the abrogation of the entire Burlingame treaty, much less of the principal treaty of which it is made the supplement. As the power of modifying an existing treaty, whether by adding or striking out provisions, is a part of the treaty-making power under the Constitution, its exercise is not competent for Congress, nor would the assent of China to this partial abrogation of the treaty make the action of Congress in thus procuring an amendment of a treaty a competent exercise of authority under the Constitution. The importance, however, of this special consideration seems superseded by the principle that a denunciation of a part of a treaty not made by the terms of the treaty itself separable from the rest is a denunciation of the whole treaty. As the other high contracting party has entered into no treaty obligations except such as include the part denounced, the denunciation by one party of the part necessarily liberates the other party from the whole treaty.¹

In the present instance, no particular articles or clauses of specified treaties were indicated by the Act. It was left to the President to ascertain them and either to negotiate modifications, which he could not be required to do, or to give notice of termination, which would have operated to abrogate the treaties in their entirety and thus to relieve the other nations of all their obligations thereunder. It is not surprising that the President, in the exercise of his constitutional powers, decided that this was too high a price to pay in order to procure for Congress a liberty of future action of which it might never avail itself.

¹ See Crandall, *Treaties: Their Making and Enforcement*, p. 461, quoting Richardson: *Messages and Papers of the Presidents*, VII, 518, 519.

THE INTERNATIONAL LABOR ORGANIZATION OF THE LEAGUE OF NATIONS

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On October 29, 1919, the first annual meeting of the International Labor Conference opened at Washington, D. C. It convened pursuant to the invitation of the United States Government authorized by joint resolution of Congress in accordance with and under the provisions of the Versailles Peace Treaty and the League of Nations. The meeting was in some respects embarrassed by the fact that the League of Nations had not yet come into existence, but it nevertheless proceeded, doubtless on the theory that, in the present disjointed times, it is not inappropriate that the creature should precede the creator.

Thirty-nine nations were represented, counting as such, Canada, India and South Africa, which were robustly represented. The scheme of representation was that each sovereignty should send two government delegates and one employers' and one workers' delegate. The delegates were to be attended by technical advisers. Canada had 22 such, Great Britain 16, France 10, and Belgium 18.

The United States, not having adhered to the League of Nations, was not officially a member, but with those of various other nations, not yet members of the League, its representatives were given the privileges of the conference.

Mr. Wilson, Secretary of Labor of the United States, welcomed the conference in the name of President Wilson, and was chosen president. He presided over many of the sessions with conspicuous ability, clarifying and expediting business, observing the courteous and dignified forms proper in parliamentary assemblies, and by fairness, knowledge and firmness, avoided and composed difficulties. He afforded a marked contrast to several less practiced though eminent men, who, from time to time, temporarily took the chair.

Among the delegates and advisers, many persons of official importance were included, as Honorable Gideon D. Robertson, Senator and Minister of Labor, and Honorable Newton W. Rowell, K.C.M.P., President of the Privy Council, of Canada; Rt. Honorable G. N. Barnes, M.P., Member of the War Cabinet, and Sir Malcolm Delevingne, K.C.B., Assistant Under Secretary of State, Home Office, for Great Britain; Mr. A. Fontaine, Director of the Labor Department, Ministry of Labor, for France; Baron Mayor des Planches, Senator and Ambassador, for Italy; and many of like station. Presidents and professors of universities were not wanting, and a number of women were included. The actual attendance was somewhat smaller than the imposing list of delegates and

advisers would indicate. At the second session, 87 delegates were present, and at the closing session, November 29th, 90 were recorded.

The Peace Treaty delegated to the United States the tasks of convening and organizing the conference. The organizing committee was presided over by M. Fontaine of France, and the United States was represented thereon, first, by Dr. J. T. Shotwell, of Columbia University, and then by Mr. Samuel Gompers. Delegates were entitled to speak in their own language, provided they furnished a French and English translation of their remarks, French and English being the official languages of the conference. Viscount de Eza, a delegate for Spain, desired that Spanish be made official also. Though this was not done, the proceedings were every night translated into and printed in Spanish.

The conference after debate and in anticipation of their admission to the League of Nations, admitted Germany and Austria to membership on equal terms.

It is impossible to summarize the debates, often stirring and eloquent, and sometimes radical, but more generally, to the credit of the delegates be it said, reasonable, businesslike and informing.

The result of a month's session was that the agenda was quite faithfully carried out, and this resulted in the adoption

First, of a convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week (with certain exceptions). The convention defined the term "industrial" so as to include mines, quarries, manufacturing, repairing, building and repairing railroads, telephone viaducts, and, in general, transport of passengers and of goods; but left the questions of transport by sea and inland waterways to be determined by a special conference, and the authorities of each country to define the line separating industry from commerce and agriculture, after declining to include agriculture in the limitation. As illustrating the difficulties to be met in the latter line, the question was raised whether the manufacture of crude sugar on a sugar plantation was to be classed as "industry" or "agriculture," that being the prerequisite to marketing the cane juice in any way; and a like question arose as to felling timber. Certain excess of hours was allowed in special circumstances and in continuous processes. Modifications of the general rule were allowed in Japan, where 57 to 60 hours per week were permitted for persons over fifteen years of age, a weekly rest period of twenty-four hours being required, but these requirements were to come into force only on July 1, 1922, and certain ones not until July 1, 1923. This was as great a reduction in hours of work from those at present observed in Japan, as the eight-hour day for Europe and America. In British India, a sixty-hour a week limitation was adopted for all workers covered by the factory act, and China, Persia and Siam were exempted from the terms of the convention. Elaborate exceptions were provided for Greece.

Second, as to unemployment, the course recommended was

1st. The establishment by each nation of free public employment agencies under central authority, to be advised and coördinated in certain ways.

2nd. Where countries have insurance against unemployment, provision to be made for admitting workers who are within the territory of the insuring

country but are from other countries which are members of the labor organization, to the benefits of such insurance.

3rd. It was also *recommended* that the charging of fees by employment agencies be forbidden.

4th. That recruiting of bodies of workers in one country to be employed in another be permitted only by mutual agreement between the countries concerned.

5th. Also that there be established insurance against unemployment, either by government or private organization with government subventions.

6th. Also that public work be, as far as practicable, reserved for periods of unemployment.

7th. As to foreign workers, a system of international reciprocity was advised in admission to benefit of laws and regulations protecting workers, and in making organization lawful.

Third, as to the employment of women in industrial or commercial undertakings before or after childbirth, a convention was adopted that they be not permitted to work during six weeks after childbirth and may leave work on a medical certificate that confinement will probably take place within six weeks. During such absence a woman must be paid sufficient for full and healthy maintenance of herself and child either from public funds or by a system of insurance. While she is nursing her child, a worker must be allowed half an hour twice a day, during working hours, for that purpose. It will be observed that these provisions are in no way limited to married women.

Fourth, the employment of women during the night, that is from ten P.M. to five A.M., was forbidden, but various exceptions were allowed.

Fifth, regulations for prevention of anthrax were recommended by disinfecting wool affected in the exporting country or at the port of entry.

Sixth, it was also recommended that women and persons under eighteen be excluded from certain employments in which there is danger of lead poisoning, and only be employed with certain precautions where lead compounds are used.

Seventh, the establishment of government health services was recommended, this including factory inspection and service for safeguarding the health of workers.

Eighth, by convention, it was provided that employment of children under fourteen in industrial undertakings be forbidden, but with exceptions, especially as to Japan and India.

Ninth, by convention, young persons under eighteen years were forbidden to be employed in the night in industrial undertakings, with certain exceptions; as to persons over sixteen years, again with exceptions as to Japan and India.

Tenth, adherence to the conventions adopted at Berne in 1906 prohibiting the use of white phosphorus in the manufacture of matches was recommended.

There were considerable debates and conflicting views as to various matters. The aspiration of workers in all countries to enjoy the leisure of Saturday "afternoons" was expressed by M. Jouhaux of France, and the reduction of the weekly hours of labor to forty-four was considered, but not agreed to, though evidently it is "in the offing." A motion by Mr. Baldesi of Italy to amend the draft convention as to hours of labor, so as to prevent any decrease of wages

on account of the decrease of hours of work, was ruled not in order, as the conference was dealing with hours of labor and not with wages. The eight-hour a day and forty-eight hours a week convention was finally unanimously adopted and is counted a principal achievement of the conference.

There were earnest protests against the enormous predominance of the European states in the Governing Board of the International Labor Office, and of European delegates on all committees. Thus, Dr. Garcia of Ecuador complained that of 120 members appointed to serve on committees, 100 were European and only two from Spanish-American countries. He said: "If these things happen while we are in America, what is going to happen when we have the next meeting in Europe?"

One of the most significant efforts to extend the scope of the conference, and what many deemed the most alarming, was that to control the international distribution of raw material and the cost of ocean carriage. Mr. Baldesi urged that the question of getting raw material was at the foot, in the main, of non-employment. He accordingly moved a resolution that these questions (the distribution of raw material and ocean transport), were strictly connected with the question of unemployment and that they be referred to the League of Nations for study and solution. In the debate on this motion, it transpired that a much more drastic resolution had been prepared, calling for a permanent commissioner under the League of Nations to insure equitable distribution of raw material between the nations, and another to regulate ocean freights on staple products. A minority report of the Committee on Unemployment to this effect had been circulated, though later abandoned. Against such action, it was urged, that if the Labor Conference were to extend its powers to this extent it would endanger its success and its existence. Further, that nothing could eliminate the competition of nations to secure for their own people the best possible living conditions and greatest prosperity; that any intervention of this kind would interfere *with the right of private property and even with the right of national property*; that the principle is "*aimed to equalize the rights upon the soil of the earth and the fruits of energy of every nation.*" Mr. Gemmill, of South Africa, promptly called attention to the fact that the Governing Body of the Labor Office (under the League of Nations) which would appoint any such commissions as moved, was composed of 24 members, 20 of which were from the European Continent.

It was shown that a delegate on the sub-committee dealing with unemployment, urged that the present system of *land tenure* was the main cause of unemployment and advocated the abolition of private ownership in land.

Mr. Jouhaux of France denounced as "a new form of economic imperialism as dangerous as the imperialism of yesterday" the attempt by any country by restrictions on exports to retain the advantage she possessed by producing raw material. "*Economic equality*" and the relief of "*exhausted countries*" were demanded.

Mr. Baldesi's motion was finally lost by a close vote of 43 against 40. France, Italy, Spain, Switzerland and Japan were among those supporting, Great Britain, Canada, South Africa, India, and Argentina were among those opposing the motion. The obvious intent appeared to be, by the assistance of international

labor conventions, to enable the more exhausted or meagerly provided Powers to expropriate the raw material of those more favored, as, in Pharaoh's dream, the lean kine devoured the fat kine. The coal, oil, timber, and food of this country would be distributed by a European committee in such a way as it declared equitable. Countries like those in the two American Continents would not suffer from "*forcible feeding*," but from "*forcible bleeding*," and the doctors in charge would be always European. If the United States desires this system to be instituted and to submit herself to it, it should only be with full understanding. She ought not to be committed to it by the designs of her rivals or enemies, or the blindness and incompetence of those who, at any time, are her leaders. Let the light be turned on and the far-reaching character of the design fully displayed. The fact that it has been further exploited at the recent meeting of the League of Nations, especially by Senator Lafontaine, a delegate from Belgium, is not unimportant. The setting aside of all self-interest on the part of the two Americas, South Africa, India and other countries in like situations, is not only asked but demanded in order to indulge and place in absolute control, with a mere nominal representation of other Powers, the self-interest of the European alliance. The world has shrunk from such experiments between individuals and on a small scale. Is it willing to commit itself to such a novel experiment between the nations of the earth and substantially on a universal scale? The law of supply and demand now tends to distribute both raw material and population where most needed and best taken care of. Can this law be safely superseded for us all by the edicts of a European committee?

When a resolution was offered asking the Governing Body of the Labor Office to appoint a commission to consider and report measures for regulating migrations of workers from state to state, the profound distrust, entertained by many, of the character of that governing body was shown by an amendment, offered from South Africa and duly carried, requiring that the representatives of European states on this commission be limited to one-half the total membership.

It is worth noting that Mr. Hudson, legal adviser for the drafting committee, stated to the conference that certain provisions of the draft provided "the dates in which the draft convention will come into force as a convention *in international law*," but pointed out that it may become "an international obligation" even before domestic legislation for its enforcement.

A resolution by Mr. Gemmill of South Africa, "That this conference expresses its disapproval of the composition of the governing body of the International Labor Office, inasmuch as no less than 20 of the 24 members of that body are representatives of European countries," was adopted, after debate, at the closing session, six minutes before adjournment time, by 44 to 39 votes.

The conference undertook to place in the agenda for the next conference two subjects, a revision of the by-laws as to the composition of the Governing Body, and the question of limitations as to agricultural labor, the rest of the agenda being left to the Governing Body by a vote of 42 to 14; but it appearing that there was no quorum, the action failed. By 64 to 7 the entire agenda was then referred to the Governing Body.

In addition to the English, French, and Spanish texts, a German text of the action of the Washington Conference will shortly be published by the International Labor Office. The Swiss, German and Austrian Governments have already issued such translations (which are not wholly in accord), but a commission, including a representative of each of these governments and the International Labor Office, has now agreed upon a German text.

SECOND LABOR CONFERENCE

The General Conference of the International Labor Organization of the League of Nations was convened by the Governing Body for its second meeting, June 15, 1920, at Genoa, Italy.

This conference recommended that each member of the International Labor Organization limit labor in fishing industry in the direction of the eight-hour day and forty-eight-hour week, with such special provisos as might be needed; also for like action as to those employed in inland navigation. These extensions to new classes of workers were all in the general lines adopted at the Washington Conference, and each nation, it was provided, should determine for itself what is inland and what maritime navigation; also that each member of the organization embody in a seaman's code all its laws and regulations as to seamen as such.

The minimum age for admission of children to employment at sea was fixed at fourteen years (ships of war were excluded, as well as school training ships), such convention to be binding on any two nations ratifying and on others as rapidly as they ratify.

The conference also adopted conventions for payment to seamen, under contract, on vessels lost or foundering, of an indemnity against unemployment arising from such accident, at like rate with their wages, for not exceeding the period of two months.

It also adopted a convention for establishing facilities for finding employment for seamen, forbidding such business as a private commercial enterprise for gain, except as a continuance of an established business, temporarily, under government license and supervision; also providing for public employment offices to be provided without charge by the several states for this purpose; for committees of equal numbers of representatives of ship-owners and seamen to advise in these matters; also for giving freedom to seamen in choice of ships and freedom in choice of crews to ship-owners; also requiring necessary guarantees to protect parties in their rights in all engagements or articles of agreement, and facilities for seamen to examine the same before and after signing; also giving the privileges of above offices to seamen of all countries which ratify the convention and where the industrial conditions are generally the same; also stipulating for the putting in force of their covenants by each party thereto, with certain exceptions, and for their coming into force in the manner intimated as to previous conventions.

These conferences and their action must now be recognized and studied as new and important forces in international social and economic life. Domestic affairs must be also profoundly affected by them.

THE INTERNATIONAL LABOR OFFICE

This office, organized under and by virtue of the League of Nations, has for its Director-General Mr. Albert Thomas, of France, and for Deputy Director-General Mr. Harold E. Butler, of Great Britain, who served as Secretary-General of the Washington Conference. It has two principle divisions, the Diplomatic and the Scientific. The former will negotiate with the different governments and employers' organizations and trades unions to obtain the ratification of the conventions adopted by the International Labor Conferences. That limiting the hours of labor has particularly engaged their efforts. Mr. E. J. Phelan, of Great Britain, is chief of this division. The Scientific Division, under Dr. Royal Meeker, of the United States, will collect information as to social and economic problems of the world and edit various publications.

There are also seven technical sections on Unemployment, Emigration, Seamen, Agriculture, Russian Enquiry, Social Insurance, and Coöperation.

The section on Russian Enquiry, under Dr. G. Pardo, who served as Deputy Secretary-General at the Washington Conference, is compiling an elaborate report on Russia, derived from all available sources, including official decrees, wireless messages, newspapers and the statements of foreign observers in Russia. Dr. Pardo has prepared a questionnaire and bibliography on Labor Conditions in Soviet Russia for the use of a commission to inquire as to labor conditions in Russia, and this is printed. It is especially complete as to the Bolshevik régime. The Polish member of the Governing Body proposed such a commission at the January meeting, 1920. The proposal was reluctantly accepted. It was especially pressed by the workers' delegates, who urged that the unrest among the working classes was due to ignorance of what has happened in Russia; that reports are absolutely conflicting and that the truth as to labor conditions in Russia would cause this unrest to vanish. Certainly the world must never shrink from the truth. It is only to be hoped and insisted that verities and not visions be reported and with impartial thoroughness. Investigators must labor with the germs of every fell disease. Their danger is great and their caution must be intelligent and unremitting or deadly and widespread infection may ensue, not only for the investigators but for millions besides.

The League of Nations engaged in an inquiry into the general conditions in Russia at the present day, and invited the International Labor Office to appoint two members of a commission of such general inquiry (not confined to labor conditions) and that these two members be included in the Labor Office's independent mission. The Labor Office in March last agreed to appoint two members upon the commission of the League, but refused to include these persons in its own commission. It decided that its own commission should consist of five employers, five workers and two government delegates. The report compiled covers 450 pages. It shows in Soviet Russia the enactment of advanced labor legislation of the type advocated by workers very generally, limiting hours of work, protecting women and children, providing many safeguards, helping the unemployed, etc. But it shows that after about ninety per cent of the industrial activity of Russia had been nationalized, beginning with workers'

control and followed by national control, *there ensued a ruinous falling off of production; that wages grew beyond measure and lost all relation to business, expense and production, and yet could not keep pace with the cost of living.* For instance, in June, 1918, the expense of a workingman's family was estimated at 11.8 roubles per head and the wages 6 roubles a head, thus showing a deficit of 95 per cent. Between July, 1916, and April, 1918, the price of food increased 898 per cent, while the wages of skilled workers increased only 237 per cent, of semi-skilled workmen 344 per cent, and of common laborers 450 per cent. It appeared that the average increase of a skilled metal worker was five times less than the increase of the cost of living. There was a tremendous decline in the purchasing power of money, and schemes for payment in kind were tried and the government fixed rations for various classes of citizens. Workers were loth to work, and many migrated to the country where food was less difficult to get.

The Soviet press shows that, excluding railroad employees, workers in industry decreased 2,402,000 men up to January, 1919, and a report of the Supreme Council of Popular Economy of March, 1919, states that production in the greater number of Russian industries has decreased 400 to 500 per cent.

Notwithstanding the very advanced enactment limiting hours of labor, the Russian Labor Code of 1919 excepts from the rule against overtime (1) all work necessary to prevent any danger or public disaster threatening the existence of the Soviet Government of the Federal Soviet Republic or the lives of its citizens, and (2) for the proper carrying out of essential public works dealing with water supply, lighting, sewers and transport, and for any unexpected eventuality affecting these services. Moreover, a wireless message of February 13, 1920, which appears to contain a decision adopted by the supreme governing authority, reads thus: "*Sunday is declared a working day. Work in factories and workshops, as well as in Soviet establishments, is increased by two hours.*" The humane limitations on hours for labor seem in fact wholly abandoned and excessive hours, with no seventh day rest, seem to be imposed.

Since the latter part of 1918, compulsory labor has been pushed to extremes. Persons between sixteen and fifty years of age are subject to compulsory labor by the labor laws of 1919, and a labor distributing section of the Commissariat of Labor may fine and imprison any who do not comply. The labor section of the Peace Treaty of Versailles declares "Labor should not be regarded as a commodity or an article of commerce," but the Assistant Commissary of the Supreme Council of Popular Economy, Miliutin, published an article December 3, 1919, insisting that the final step towards increased production is compulsory labor service. Bukharin, one of the principal leaders of the Bolshevik, published an article in *Pravda*, December 28, 1919, saying that the state must learn to use men and that "the fundamental transformation process which we should know and understand is that of goods into men and men into goods." He speaks of establishing an iron discipline among workers, saying, "Let us introduce a military discipline into labor and we shall thus increase the productivity of labor."

Trotsky, on December 17, 1919, published an article in *Pravda* likewise

EDITORIAL COMMENT

ANNUAL MEETING OF THE SOCIETY

The Executive Council of the American Society of International Law met in Washington on November 13, 1920. After much discussion, it decided that the Society should resume its annual meetings, which had been suspended during the war. The reason for the suspension was that the Society has always sought to consider both sides of a question, and all sides when there are more than two. It was felt that during the war, to which the United States was a party, its members could not be expected to discuss the questions arising from day to day of an international character with a detachment which becomes a scientific body. It may be said that in law the war with Germany still continues; that the armistice of November 11, 1918, was only a cessation of hostilities. This is true in theory, but in fact the war declared against Germany by the United States on April 6, 1917, really ended with the armistice, and the two nations are unofficially, although not officially, at peace. Therefore, the reason which caused the Society to discontinue its annual meetings no longer exists, and the Executive Council resolved that the next annual meeting of the Society should be held in the city of Washington, on the evening of Wednesday, April 27, 1921, ending on Saturday evening, the 30th, with the customary dinner which is always the most enjoyable event of the meeting.

The members of the Council appreciated that the subjects selected for discussion at this first session should be chosen with the greatest care, for, in a certain way, the resumption of regular meetings after an intermission of the kind specified is like the first meeting of a new organization. The Council, therefore, determined the program, leaving it to the Committee on the Annual Meeting to work out the details.

Mr. Elihu Root, President of the Society, called attention to the first resolution of the Advisory Committee of Jurists at The Hague, of which he had been a member and which, during the summer, drafted a project for a Permanent Court of International Justice to be located at The Hague. This resolution recommended that the world should begin its orderly process of development by holding a new conference to be called "A Conference for the Advancement of International Law" in continuation of the first two conferences at The Hague, and to meet at stated intervals to continue the work left unfinished. Specifically, this conference should be held as soon as practicable, for the following purposes, as stated in the resolution:

To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

The resolution contemplated that certain scientific bodies should be invited to prepare projects for the work of the conference, which should be submitted beforehand to the several governments and then laid before the conference "for its consideration and such action as it may find suitable." It is believed that the views of the American Society of International Law upon the purposes mentioned in the resolution of the Advisory Committee should be stated, and that they might be found helpful to the cause of justice between nations, based upon rules of law.

It is earnestly hoped that the members of the Society may bend their backs to the burden, for such it is, and that the Society shall not prove recreant to its self-imposed mission "to foster the study of international law and promote the establishment of international relations on the basis of law and justice."

A PERMANENT COURT OF INTERNATIONAL JUSTICE

As the JOURNAL goes to press, the good news comes from Geneva that on Monday, the 13th day of December, 1920, the Assembly of the League of Nations adopted, with sundry modifications, the project for a permanent court of international justice, drafted by an advisory committee at The Hague in the summer of 1920. It also recommended that the project be referred to the nations for their consideration and eventual ratification, that it should go into effect when twenty-two nations had ratified it, for the nations so ratifying. The hope was expressed that at least this number would accept it at an early date so that the judges might be selected at the meeting of the Council and the Assembly in September, 1921, and the court be constituted and installed in the Peace Palace at The Hague in the course of 1921.

An editorial comment in the last number of the JOURNAL dealt briefly with the project, stating the method of choosing the judges, the jurisdiction of the court and its procedure.¹ The text of the project was printed in the supplement to that number.²

The Council, upon whose invitation the jurists had met at The Hague and to which their report was submitted, approved the general scheme, recommending at the same time to the Assembly that certain of its provisions should be modified. The articles more or less affected are 27, 29, 33, 34, 35, 37 and 56. Two new articles, 36bis and 57bis, were added. The most important modification is that concerning Articles 33, 34, and 35 of the project, which were intended to make resort to the court obligatory in a limited number of cases, without a special agreement to submit the dispute as is required in arbitration. This is the great distinction between judicial procedure, on the one hand, and arbitration, on the other, and the Council evidently preferred a court of arbitral justice to one

¹ October, 1920 (Vol. 14), p. 581.

² *Ibid.* Official Documents, p. 371.

of justice in the strict and technical sense of the word. It is believed, however, that the modifications of Articles 33, 34 and 35 affect only the procedure, not the decision, which, in the Court of Arbitral Justice of 1907, as well as in the Permanent Court of International Justice of 1920, was to be judicial. Article 33 of the project was thus worded:

When a dispute has arisen between states, and it has been found impossible to settle it by diplomatic means, and no agreement has been made to choose another jurisdiction, the party complaining may bring the case before the court. The court shall, first of all, decide whether the preceding conditions have been complied with; if so, it shall hear and determine the dispute according to the terms and within the limits of the next article.

The Council recommended that the following article be substituted for it:

The jurisdiction of the court is defined by Articles 12, 13 and 14 of the Covenant.

In reality, the new Article is a substitute for the jurisdiction contained in Article 34 of the project. The latter part of Article 34 reads as follows:

The court shall also take cognizance of all disputes of any kind which may be submitted to it by a general or particular convention between the parties.

In the event of a dispute as to whether a certain case comes within any of the categories above mentioned, the matter shall be settled by the decision of the court.

The Council recommended that it be replaced by an article of its new drafting:

Without prejudice to the right of the parties, according to Article 12 of the Covenant, to submit disputes between them either to judicial settlement or arbitration or to inquiry by the Council, the court shall have jurisdiction (and this without any special agreement giving it jurisdiction) to hear and determine disputes, the settlement of which is by treaties in force entrusted to it or to the tribunal instituted by the League of Nations.

Article 35 of the project is untouched, except that it is subjected to provisions of 57*bis*, an additional article drafted by the Council.

In view of the fact that the parties to the court may not, without a further agreement, sue one another, it was, of course, necessary to provide for the special agreement which the Council provided, and the procedure to be followed in such a case, which was lacking in the project which contemplated judicial, not arbitral, procedure. For this purpose, the Council drafted an additional Article, 36*bis*, whereof the text is as follows:

When the parties to a dispute agree to submit it to the jurisdiction of the Permanent Court of International Justice, the court shall, in the first place, apply the rules of procedure which may have been laid down in the agreement and, in the second place, in so far as they are applicable, the rules of procedure contained in The Hague Convention of 1907, for the pacific settlement of international disputes, always provided such rules are consistent with the provisions of Articles 1-36, 37, 39, 49 and 59 of the present convention.

The Advisory Committee of Jurists felt it necessary to have an official language. They unanimously agreed upon French. In this they did not innovate, but followed the practice of the past two centuries and more. They felt, however, that the parties in dispute might prefer another language. This they

authorized the court to permit. The Council, however, preferred two languages, French and English; or rather, the English members preferred English, and the power of the British Empire was great enough to force its acceptance. The court is apparently to be double-tongued until Great Britain can secure acceptance of English as the judicial language. In any event, one language is better than two, and it is to be feared that the substitute of the Council for Article 37 of the original project is far from happy. It is as follows:

The official languages of the court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment will be delivered in French. If the parties agree that the case shall be conducted in English, the judgment will be delivered in English.

In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the court will be given in both languages. In this case the court will at the same time determine which of the two texts shall be considered as authoritative.

The court may, at the request of the parties, authorize a language other than French or English to be used.

Article 56 of the project permitted a dissenting judge to state his dissent or reservations, without, however, setting forth the reasons in detail. Practice differs in different countries. The procedure based upon the civil law prefers the decision of the court without dissenting opinions. Anglo-American practice prefers dissenting opinions. English practice, however, prevailed in the Council, and Article 56 was thus amended: "Judges who do not concur in all or part of the judgment of the court may deliver a separate opinion."

Finally, the Council added the following new Article, 57*bis*: "The decision of the court has no binding force except between the parties and in respect of that particular case."

The purpose of this article is clear. However, if the court is constituted and its decisions meet with approval, it will, little by little, lay down principles in special cases which apply to other cases of a more or less similar nature arising between other parties.

Such were the modifications proposed by the Council at its session at Brussels on October 27, 1920, and recommended by that body to the Assembly, which opened its meetings at Geneva, November 15, 1920. It is impossible to say, as the JOURNAL goes to press, whether the various amendments proposed by the Council were accepted by the Assembly on December 13, 1920. It appears, however, that the Council's opposition to obligatory jurisdiction has been approved by the Assembly, although the article proposed by the Council has been rejected. It has been replaced by a very skillful substitute, which will permit ratifications at the moment of signing it, just as in the case of the alternative procedure proposed in the additional protocol to the International Prize Court Convention, to accept obligatory procedure or not, as it may deem advisable in the interest of the court itself and of its own special interest. The new article on jurisdiction is thus given by the Associated Press:

The jurisdiction of the court comprises all cases which parties refer to it and all matters specially provided for in treaties and conventions in force. Members of the League and

states mentioned in the annex to the Covenant may either, when signing or ratifying the protocol to which the present statutes are joined or at a later moment, declare that they recognize as compulsory *ipso facto*, and without special agreement in relation to any other member or states accepting the same obligation, the jurisdiction of the court in all or any classes of legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, and the nature or the extent of reparation for a breach of an international obligation.

Declaration may be made unconditionally, or conditionally, or condition of reciprocity on the part of several or certain states or for a certain time.

There was, it appears, a very decided majority in the Assembly in favor of Article 34 of the project as drafted by the Advisory Committee of Jurists. The present article will, however, accomplish much the same purpose. It will allow nations to accept obligatory jurisdiction without forcing those to accept it which would do so unwillingly, if at all. It is well to take a step at a time, for it is only through an infinite series of little steps that the goal toward which the nations tend will be reached. As Mr. Root happily reminded his colleagues of the Advisory Committee at The Hague, "Leg over leg the dog went to Dover."

We should not criticize the defects of the plan. We should rather fall upon our knees and thank God that the hope of the ages is in process of realization.

JAMES BROWN SCOTT.

THE CALIFORNIA-JAPANESE QUESTION.

The intense prejudice of California against the Japanese is partly racial, partly economic. There is the feeling of white superiority, and there is the dislike of the workmen to be pitted against a competitor who is willing to work harder and live cheaper than himself.

It began with the hostility to the Chinese, invaluable as these people were in California's development. The treaty of 1868, Art. 5, with China had "recognized the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively." But in 1880, this "inalienable right" was denied by Art. 1 of the treaty of that year, in these words: "Whenever in the opinion of the United States, the coming of Chinese laborers to the United States or their residence therein, affects or threatens to affect the interests of that country" it may regulate, limit or suspend such coming or residence, but may not absolutely prohibit it. This restriction was to apply to laborers only and must be "reasonable."

Still the Pacific Coast was not satisfied, and at its insistence the Geary Act was passed by Congress excluding Chinese laborers altogether, followed (though it should have been preceded) by the convention of 1894, which by Art. 1 sanctioned such exclusion for ten years, to be followed by another term of ten years unless terminated at six months notice. It is curious to note the preamble of this treaty: "And whereas the Government of China, in view of the antagonism and much deprecated and serious disorders to which the presence of Chinese

laborers has given rise in certain parts of the United States, desires to prohibit the emigration of such laborers into the United States."

There was for a long time no such emigration of Japanese subjects to the United States as of Chinese, and no similar regulation and exclusion were demanded. Moreover, the development of the two countries diverged. China remained weak, loosely organized, clinging to her ancient ways. But Japan adopted modern ideas, introduced universal education, and grew in national self-consciousness and pride. The treaty with her in 1894, accordingly, was a compact between equals. Article 1 reads:

In whatever relates to rights of residence and travel; to the possession of goods and effects of any kind; to the succession to personal estate by will or otherwise; and the disposal of property of any sort and in any manner whatsoever which they may lawfully acquire, the citizens or subjects of each contracting party shall enjoy in the territories of the other the same privileges, liberties and rights, and shall be subject to no higher imposts or charges in these respects than native citizens, or subjects of the most favored nation.

Article 2 adds, however, this proviso:

It is, however, understood that the stipulations contained in this and the preceding article do not in any way affect the laws, ordinances and regulations with regard to trade, the immigration of laborers, police and public security which are in force or which may hereafter be enacted in either of the two countries.

This was a treaty of commerce and navigation. It was almost the first to surrender those extraterritorial privileges which our nationals had, like other foreigners, enjoyed in Japan. The new status further developed Japanese pride and power.

Then came the war with China over Korea, an easy victory for Japan but ending in her humiliation in being shorn of the full fruits of victory by the intervention of Russia, Germany and France. To avoid such intervention in future, there was framed an alliance with Great Britain, defensive in character, to preserve the status quo in the East.

This series of events testifies to the position of equality in the Society of Nations which Japan had attained. This position was, of course, greatly enhanced by her victory over Russia. This made her one of the great Powers. As the writer interprets the Treaty of Portsmouth, one of its important features was the increase of the Japanese food supply, cereals in Corea and Manchuria, fish in Saghalien and along the Siberian coast. This would argue the desire of the Japanese Government to retain, feed and employ its surplus population within contiguous territory. It was the same problem which faced the Germans, but solved in a legitimate way.

If this surmise is correct, Japanese policy and Pacific Coast prejudice are quite compatible, both desiring to confine the Japanese population within the jurisdiction of the Empire, both discouraging a constant overflow of the surplus of that race into Christian countries. This was coupled in Japan, however, with the penetration of China and a strangle-hold upon Corea.

Consider now the present friction with Japan growing out of the public laws of California since the Russian War. These laws affect the Chinese also, in fact result from the permitted attitude of the State toward the Chinese.

They relate to three questions, that of the schools, that of restricted immigration, that of land holding.

The elementary schools of California are open to children between the ages of six and twenty-one; also to adults "if the governing body of the district deems such admission advisable." Alien adults in pursuit of the English language may well have been on a par scholastically with much younger students. There developed a dislike that white children should mix at school with colored children. There was also objection to propinquity between young white girls and Japanese adults. This found expression in the statute which gave school boards power to exclude "children of filthy or vicious habits; or children suffering from contagious or infectious diseases, and also to establish separate schools for Indian children and for children of Chinese or Mongolian descent." In the last-mentioned case, such children are not to be admitted to the regular schools. These statutes were amended and repealed from time to time. I quote from the law of 1909.

The coupling together in the same sentence of vicious, diseased and Oriental children, was a slap in the face. The separate treatment of those of Mongolian descent was discrimination, setting them apart from other aliens. It would have been possible, one would think, to settle all genuine grievances arising from the mixture of races and ages at school, by giving equality of treatment to all aliens. Then no one race could have complained. But when a proud, highly educated people found itself classed with Indians, Coreans and Chinese, discriminated against and despised, it naturally remonstrated and insisted that its treaty right of the most-favored-nation treatment should be observed. This topic was discussed by Mr. Root with great force and clarity in the first volume of this JOURNAL.

Then there was the immigration question. This related to laborers only. The prejudice and the arguments were much the same as in the case of the Chinese twenty years before. But Japan is not a Power to be treated as China was then treated, without remonstrance. Moreover, as has been argued, the Japanese Government itself was not desirous that its laborers should emigrate. A solution for this difficulty therefore was found in appeals to Governor and Legislature in California to stop action which, by direct violation of treaty, tended to embroil the two Powers, and in the substitution for an exclusion statute of a private understanding, a so-called gentlemen's agreement, to the same purport. This is now operative.

And now comes the land question to disturb our relations. In accordance with the Treaty of 1894, nationals of each contracting party had the "full liberty to enter, travel, or reside in any part of the territories" of the other; access to its courts to defend their rights; and property rights as already recited. Safeguarded by this treaty, came a small but continuous stream of immigration. A considerable percentage sought and worked the land. These Japanese immigrants were naturally gregarious. They were regarded by the white Californians with growing suspicion and dislike. The hostility to the Chinese had been largely urban; hostility to the Japanese is largely agricultural and rural. Agitation of the familiar kind was set on foot and sought expression

in State legislation. After the gentlemen's agreement was reached, this legislation was aimed at land-holding rights under the treaty. By Act 129, approved 1913, Sec. 1, it took this form: "All aliens eligible to citizenship may acquire, possess, enjoy, transmit and inherit real property or any interest therein" like native citizens of the United States.

Since Japanese are incapable of naturalization under our laws and judicial decisions, this amounted to a prohibition of Japanese land owning, slightly camouflaged. But what was to become of their treaty rights? Under our Constitution, no State can make, no State may violate, a national treaty. Therefore, Sec. 2 added that aliens ineligible to citizenship might acquire real property "in the manner and to the extent and for the purposes described by any treaty now existing," etc., "and may in addition thereto lease lands in this State for agricultural purposes for a term not exceeding three years.

If this provision under Sec. 2 is fairly interpreted and carried out, perhaps no injustice is done and no treaty right violated. Nevertheless, as in the school matter, there is a discrimination against those of Mongolian descent as compared with other aliens, a denial of that equal treatment which the most-favored-nation clause demands.

Unfortunately this is not the end. The writer has not been able to obtain the text of the additional legislation as to alien land holding, passed by the people of California by initiative at the November election. But its purport seems only too clear. It prohibits absolutely land ownership by Japanese. It forbids them to lease farm land. It prevents their working land as guardians of their children, who being capable of citizenship might in collusion with their parents evade the prohibition. Nor may Japanese become shareholders in any farm land company. Whether this legislation is aimed at Japanese by name or at persons of Mongolian descent or at persons incapable of citizenship, I am not informed. In any case its intent to debar certain aliens and not others, is evident. It has the same taint of illegal discrimination that has been already remarked. But it is also to all appearance a plain violation of the Treaty of 1894. To excuse it by alleging that Americans cannot own land in Japan, even if this be true, is not to the point, unless it can be shown that our nationals are unequally treated, that they are debarred while other aliens are permitted the privilege.

This then is the parting of the ways. A single State of these United States arrogates to itself the right to change a national treaty. We have seen a long course of aggressive anti-Oriental legislation in California, gradually encroaching upon treaties which are the law of the land, and now culminating in open violation of treaty. Whether Californian prejudice and the action resulting are justified or not, has nothing to do with our question. What we ask is, whether one State is greater than the whole, whether one State may alter at will a treaty made by the United States?

There are three conclusions, growing out of this historical recital, which California should take to heart.

1. If it has a grievance against a foreign Power or its subjects, redress lies not with itself but with the National Government and Congress.

2. If one of the States violates a treaty of the United States, the latter is responsible for the act of the former.

3. Being thus responsible, it must have a power commensurate. If no efficient control exists over State legislative action affecting a foreign Power and its treaty rights, then such control must be provided, not a theoretical control merely, but one prompt and drastic.

It has been reported from time to time that negotiations are under way with Japan to frame a new treaty, that an agreement has been reached, but that the "advice and consent" of the Senate are to be taken before the terms of the treaty are made known. It is well that the Senate's part in treaty-making is again recognized. It is well that our relations with Japan, so needlessly disturbed by the unfriendly acts of California, are to be settled by joint harmonious action. It is all the more necessary that Californian anti-Japanese legislation must be inoperative until a new basis of intercourse is reached.

THEODORE S. WOOLSEY.

RECOGNITION OF NEW GOVERNMENTS

Perhaps the most important question of foreign policy confronting the incoming administration will be that of entering upon trade (and possibly diplomatic) relations with Soviet Russia. The Bolshevik Government at Moscow has now maintained an uninterrupted existence of over three years and established a firm and stable rule throughout the greater part of the former Russian Empire. It has apparently succeeded in strongly entrenching itself in power; and this in the face of a series of revolutions within, aided and abetted by attacks and intrigues from without.

It is not the purpose of this editorial to discuss the wisdom of a policy of recognition so much as to call attention to a few of the many precedents tending to justify such action in our own history.

On August 16, 1792, the American Minister to France, Gouverneur Morris, notified our government that another "bloody" revolution had taken place in Paris, resulting in the deposition of the French King, and asked for instructions as to the course he should pursue. Secretary of State Jefferson replied on November 7th as follows:

It accords with our principles to acknowledge any government to be rightful which is formed by the will of the nation, substantially declared. The late government was of this kind, and was accordingly acknowledged by all the branches of ours; so any alteration of it which shall be made by the will of the nation, substantially declared, will doubtless be acknowledged in like manner. With such a government *every kind* of business may be done. But there are some matters which I conceive might be transacted with a government *de facto*, such, for instance, as the reforming the unfriendly restrictions on our commerce and navigation, such as you will readily distinguish as they occur.

In a later instruction to Mr. Morris, dated March 12, 1793, which "has often been cited as a fundamental authority,"¹ Jefferson said:

We surely cannot deny to any nation that right whereon our own government is founded—that everyone may govern itself according to whatever form it pleases, and change these

¹ See Moore's Digest, I, pp. 120 ff., the source of the citations contained in this editorial.

forms at its own will; and that it may transact its business with foreign nations through whatever organ it thinks proper, whether king, convention, assembly, committee, president, or anything else it may choose. The will of the nation is the only thing essential to be regarded.²

Mr. Rush, American Minister to France, hastened to recognize the provisional government of the French Republic on February 28, 1848, by his "personal presence" at the Hôtel de Ville on the third day after that government had been proclaimed. Secretary of State Buchanan highly approved of this perhaps somewhat precipitate action. He wrote:

In its intercourse with foreign nations the Government of the United States has, from its origin, always recognized *de facto* governments. We recognize the right of all nations to create and re-form their political institutions according to their own will and pleasure. We do not go behind the existing government to involve ourselves in the question of legitimacy. It is sufficient for us to know that a government exists capable of maintaining itself; and then its recognition on our part inevitably follows. This principle of action, resulting from our sacred regard for the independence of nations has occasioned some strange anomalies in our history. The Pope, the Emperor of Russia, and President Jackson were the only authorities on earth which ever recognized Dom Miguel as King of Portugal.

Whilst this is our settled policy, it does not follow that we can ever be indifferent spectators to the progress of liberty throughout the world, and especially in France. We can never forget the obligations which we owe to that generous nation for their aid at the darkest period of our Revolutionary War in achieving our own independence.

And in a special message to Congress, President Polk spoke in similar commendatory terms of the conduct of Mr. Rush who, he said had

judged rightly of the feelings and sentiments of his government and of his countrymen, when, in advance of the diplomatic representatives of other countries, he was the first to recognize, so far as it was in his power, the free government established by the French people.

The policy of the United States has ever been that of non-intervention in the domestic affairs of other countries, leaving to each to establish the form of government of its own choice. While this wise policy will be maintained toward France, now suddenly transformed from a monarchy into a republic, all our sympathies are naturally enlisted on the side of a great people, who, imitating our example, have resolved to be free.

However, it may be noted that in 1851, Mr. Rives, at that time American Minister to France, felt that it did not become the representative of a "free constitutional republic" to sanction the successful *coup d'état* of Louis Napoleon by his presence at official receptions until after the French elections.

The United States did not even hesitate to accord an early recognition to the Second Empire under Napoleon III. In a communication to Mr. Rives, dated January 12, 1852, Secretary Webster declared:

From President Washington's time down to the present day it has been a principle, always acknowledged by the United States, that every nation possesses a right to govern itself according to its own will, to change institutions at discretion, and to transact its business through whatever agents it may think proper to employ. This cardinal point in

² Secretary Fish thus explains "the will of the nation" in a communication, dated December 16, 1870, to Mr. Sickles, our Minister to Spain: "We have always accepted the general acquiescence of the people in a political change as a conclusive evidence of the will of the nation."

our policy has been strongly illustrated by recognizing the many forms of political power which have been successively adopted by France in the series of revolutions with which that country has been visited. Throughout all these changes the government of the United States has conducted itself in strict conformity to the original principles adopted by Washington, and made known to our diplomatic agents abroad, and to the nations of the world, by Mr. Jefferson's letter to Gouverneur Morris, of the 12th March, 1793; and if the French people have now substantially made another change, we have no choice but to acknowledge that also; and as the diplomatic representative of your country in France, you will act as your predecessors have acted, and conform to what appears to be settled national authority. And while we deeply regret the overthrow of popular institutions, yet our ancient ally has still our good wishes for her prosperity and happiness, and we are bound to leave to her the choice of means for the promotion of those ends.

In 1870, Mr. Washburn was instructed to recognize the Third French Republic "if provisional government has actual central control and possession of power, and is acknowledged by French people, so as to be, in point of fact, *de facto* government."

But why multiply precedents? We cannot, however, resist the temptation of citing one more example of what is believed to have been the uniform and consistent policy of our government prior to the Wilson administration. In a special message to Congress of May 15, 1856, President Pierce said:

It is the established policy of the United States to recognize all governments without question of their source, or organization, or of the means by which the governing persons attain their power, provided there be a government *de facto* accepted by the people of the country, and with reserve only of time as to the recognition of revolutionary governments arising out of the subdivision of parent states with which we are in relations of amity. We do not go behind the fact of a foreign government's exercising actual power to investigate questions of legitimacy; we do not inquire into the causes which led to a change of government. To us it is indifferent whether a successful revolution has been aided by foreign intervention or not; whether insurrection has overthrown existing governments and another has been established in its place, according to preëxisting forms, or in a manner adopted for the occasion by those whom we may find in the actual possession of power. All these matters we leave to the people and public authorities of the particular country to determine; and their determination, whether it be by positive action or by ascertained acquiescence, is to us a sufficient warranty of the legitimacy of the new government.

It may be added that the recognition of new governments is of two sorts, *de facto* and *de jure*. It would seem that the Soviet Government of Russia fulfills all the requirements of *de jure*, or diplomatic recognition; but the question of recognition is essentially a matter of policy, and if there are any sound reasons why *de jure* recognition should be withheld, it is open to us to confine ourselves for the time being to *de facto* recognition.

Owing to the conditions which prevail in Russia, such *de facto* or virtual recognition for purposes of commerce³ should undoubtedly be inaugurated by a trade agreement somewhat on the lines laid down in the proposed trade agreement between Britain and Russia.

According to press reports, this proposed agreement, which consists of ten articles, provides not merely for the reciprocal appointment of one or more

³ This has sometimes been called "recognition of the commercial flag." See article in this JOURNAL for October, 1920, p. 515.

official agents to reside and perform their functions in the territories of the other, but also provides that such agents shall have the rights accorded to diplomatic and consular representatives in respect to the visé of passports, etc., and the liberty of communicating by code and cipher. Provision is also made that the official agents shall be at liberty to receive and dispatch couriers with sealed bags which shall be exempt from examination.

Both parties also agree generally to remove forthwith all obstacles to legitimate trade (other than in arms and ammunition) between Russia and the United Kingdom; and they agree specifically that "British and Russian merchant ships, their masters, crews, and cargoes shall in ports of Russia and of the United Kingdom, respectively receive in all respects the treatment, privileges, facilities, and immunities and protection which are usually accorded by the established practice of commercial nations."

AMOS S. HERSHEY.

NEW CONSULAR CONVENTIONS

One of the problems soon to confront the United States is the conclusion of consular conventions with states such as Czecho-Slovakia, Poland, Hungary, and the Serb-Croat-Slovene State, as well as with some of their older neighbors. No treaty to which the United States is now, or has been, a party, serves as a model for agreements to be negotiated. This is due to various causes among which may be noted loose drafting, the absence of uniform or comprehensive plans, and the traditional diplomatic tendency to weaken the significance of concessions by phrases saving the face of the grantor. The terms of American consular conventions have been productive of much litigation, arising from sincere divergence of opinion as to the correct interpretation of particular provisions; and the utterances of judges have emphasized the reasonableness of the conflict. This circumstance reveals the importance of applying fresh methods in the negotiation of new conventions. It emphasizes the necessity not only of a clear perception of precise points at issue, as well as of bases of agreement, but also of the use of expressions and phrases indicating with exactness the designs of the contracting parties. Thus, if there is accord that a consul be given a particular right, what is yielded should be definitely and clearly described. To avoid future controversy, and to enlighten the courts if their aid is invoked, the nature and, if possible, the scope of what is granted should be laid bare by provisions leaving no room for conflicting interpretations.

At the moment, it may be well to examine the character of some privileges which certain foreign states may endeavor to incorporate in new conventions with the United States. To states of continental Europe whose nationals emigrate in large numbers to the United States, there still remains great concern that the individual who is permitted to enter and dwell within our land be safeguarded in his economic rights as he begins and continues his struggle for bread. To protect obscure and ignorant and helpless people from those (often-times their own countrymen) who would prey upon them is still a matter of primary concern. To that end it is sought to accord aid and protection through

the consular representative. He is needed not only in the course of the various vicissitudes which commonly harass the life of the most law-abiding alien, but also when death overtakes him, and especially if he leaves surviving him a wife and children residing abroad who shared the fruits of his earnings while they waited for favorable opportunity to join him and unite their forces as an American family.

What is, therefore, likely to be sought is the conferring upon the consular officer of the right, in such an event, to administer the estate of a deceased countryman in preference to any other individual or local official, such as a public administrator, and the right also to definite recognition as the legal representative of the foreign heirs.

The consular right of administration has been variously, vaguely and loosely expressed in certain conventions of the United States. According to Article IX of a treaty with the Argentine Confederation of July 27, 1853, a consular officer was, under certain conditions, given the right "to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs." Fifty-nine years later, the Supreme Court of the United States held that the convention failed to confer upon a consular officer a right of administration superior to that asserted by a public administrator pursuant to a local statute.¹

Article X of a treaty with Paraguay of February 4, 1859, provided that a consular officer "shall, so far as the laws of each country will permit, take charge of the property which the deceased may have left, for the benefit of his lawful heirs and creditors, until an executor or administrator be named by the said consul-general, consul or vice-consul, or his representative." Some time later, a convention with Sweden, concluded June 1, 1910, provided that a consular officer or his representative "shall, so far as the laws of each country will permit and pending the appointment of an administrator and until letters of administration have been granted, take charge of the property left by the deceased for the benefit of his lawful heirs and creditors, and, moreover, have the right to be appointed as administrator of such estate." American judicial opinion has construed these provisions as conferring upon a consular officer rights of administration which are subordinate to those established by local statutes in favor of particular classes of individuals.

In conventions with Peru, which are no longer in force, the United States appears, however, to have gone further. Thus in Article XXXIX of a treaty of July 26, 1851 (and followed in treaties of September 6, 1870, and August 31, 1887), it was declared that, until the conclusion of a consular convention, "in the absence of legal heirs or representatives, the consuls or vice-consuls of either party shall be *ex-officio* the executors or administrators of the citizens of their nation who may die within their consular jurisdictions, and of their countrymen dying at sea, whose property may be brought within their district."²

¹ See *Rocca v. Thompson*, 223 U. S. 317, affirming *In the Matter of the Estate of Ghio*, 157 Calif. 552. Cf. *In re Wyman*, 191 Mass. 276; *Carpigiani v. Hall*, 172 Ala. 287.

² See, also, Article VI of treaty with Persia, of December 13, 1856; also Article XXXIII, paragraph 10, of treaty with Salvador of December 6, 1870.

Thus in the negotiation of fresh conventions, it may be emphasized that the United States has in fact heretofore conferred by treaty the right to administer upon a consular officer. It seems important to observe also that the Supreme Court of the United States has been far from intimating that the President and Senate lack the constitutional power to confer it.³ If such a concession be regarded by them as essentially advantageous for the interests of the United States in the management of its foreign relations, there can be no doubt of the sufficiency of the treaty-making power of the Federal Government to deal with it by appropriate convention, no matter how intimately it may concern, or how definitely it may abridge, the operation of local statutes. The decision of the Supreme Court of the United States in the case of *Missouri v. Holland*,⁴ establishes the principle involved. There is merely needed a definite indication of the design of the contracting parties for the guidance of the courts. No legal impediment checks the establishment by treaty of the consular right to administer, if it be deemed expedient to confer it.

There is needed clear and uniform expression in new consular conventions of the principle variously recognized in existing treaties, that a consular officer is or becomes the legal representative of the non-resident heirs or dependents (of his nationality) of his countrymen who die intestate within his district. Article VIII of the consular convention with Germany of December 11, 1871, announced that for certain purposes such an officer should be presumed to be the legal representative. The underlying principle found recognition also in Article XV of the convention with Belgium of March 9, 1880. The provisions of these conventions suggest the desirability of a broad and definite statement for incorporation in fresh agreements to be concluded. It is required for the guidance of local governmental agencies, administrative as well as judicial, which are concerned with the problem of distributing funds, whether emanating from estates in probate or from other sources, to non-resident aliens.

For privileges such as the foregoing, states of Europe and of other continents may be prepared to offer concessions regarded in the United States as of substantial value, and possibly in relation to matters outside of the normal scope of consular conventions. The time is at hand when American commercial and essentially non-governmental bodies should, therefore, ascertain and make known through appropriate channels, in what regard the privileges of American consuls abroad require enlargement and clarification. To that end there is needed a comprehensive inquiry concerning the full scope of the functions which it is believed that a consular officer should be permitted to fulfil, and of the extent to which our existing treaties prove inadequate.

Both in the United States and abroad the value of the services of a consular officer is found to be proportional to the respect in which his office is held by local authorities with whom he is obliged to deal. It is suggested that the new

³ Declared Mr. Frederic R. Coudert, with reference to the case of *Rocca v. Thompson*, 223 U. S. 317: "We cannot feel that the court had any real doubt as to the constitutionality of a treaty granting to consuls the right to administer upon the estates of their deceased nationals for the benefit of foreign heirs." (*Columbia Law Rev.*, XIII, 181, 185.)

⁴ 252 U. S. 416.

conventions of the United States give expression to the esteem and dignity attached by the contracting parties to the consular office. The appeal of the American consular service to persons of the type most desired therein will be strengthened by the zeal with which the United States obtains and acknowledges fresh recognition in new treaties, of the importance of the consular function, as well as of the treatment to be accorded him who is empowered to exercise it.

CHARLES CHENEY HYDE.

NATIONALITY AND THE NINETEENTH AMENDMENT

The Amendment to the Constitution of the United States in accord with which the right to vote shall not be abridged on account of sex has been adopted. This action has given rise to the question as to whether other legal restraints, based on sex, should not also be removed to the end that women should have "complete juridical emancipation."

Among the limitations particularly affecting international relations are those in regard to the acquisition and determination of nationality. Practice in this matter has varied and still varies in different states, and has varied at different periods in the same state; but, in general, nationality has tended to follow the male. There have been exceptions, but these have in recent years become less common.

A national is a person owing allegiance to and entitled to the protection of a state. The change of conditions resulting from transfer of nationality may, therefore, be a matter of much significance. The tendency has been toward the adoption of the rule that the wife takes the nationality of her husband. The United States has been favorable to this rule when applied to alien women marrying nationals of the United States. Till 1907 the United States seemed reluctant to accept the converse of this doctrine, that an American woman marrying an alien lost her American nationality, but the United States did admit "that a woman's marriage with a foreigner should be regarded as an act of expatriation, at least when accompanied with residence abroad" (*Pequignot v. Detroit*, 16 F. R. 211).

In 1907 it was declared by act of Congress "that any American woman who marries a foreigner shall take the nationality of her husband" (U. S. Comp. St. Supp. 1909, 438). While the Congress of the United States may be competent to declare that a national expatriates himself or herself, it is open to question whether such an enactment would confer any other nationality on the expatriated party. Indeed the United States would deny this competence to certain states and has enacted that only a woman "who might herself be lawfully naturalized shall be deemed a citizen" upon marrying a citizen of the United States. The French law is more considerate and prescribes that "a Frenchwoman who marries an alien follows the nationality of her husband unless her marriage does not confer upon her the nationality of her husband, in which case she remains French" (I Dalloz, *Codes Annotés*, Art. 19, p. 217).

While, by naturalization in the United States, an alien man may obtain American nationality for his wife and children, it was decided in 1910 that "an alien wife of an alien man, both having resided in this country as husband and wife for over thirty years" may not in her own right legally be naturalized (U. S. v. Cohen, 179 F. R. 834). This decision accords with British law, which does not allow naturalization "to any person under disability," and "disability" includes "the status of being a married woman."

Other states as well as the United States discriminate against women in the acquisition of nationality, some of these on the ground of the requirements of military service, some on the ground of confusion of relationships, etc.

The old English principle that allegiance could not be put off by a national was set aside by the Naturalization Act of 1870, and in the British Nationality and Status of Aliens Act of 1914, which reserves to the woman considerable right over herself when her husband changes nationality. While this late Act provides that "the wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed alien," it also provides that if "a man ceases during the continuance of his marriage to be a British subject, it shall be lawful for his wife to make a declaration that she desires to retain British nationality, and thereupon she shall be deemed to remain a British subject."

The valuable contribution of Dr. Zeballos entitled *La Nationalité*, in its exhaustive treatment shows the range of conflict of laws upon the subject of acquisition of nationality.

The recent war has made evident the importance of clear understanding as to who are nationals and therefore owe allegiance to and are entitled to the protection of a state. Many questions in regard to inheritance and taxation become complicated through conflict of laws in regard to nationality. The extension of the franchise to women has particularly raised the query as to whether other rights which are supposed to go with full citizenship, *e.g.*, the right of a wife to be naturalized regardless of the nationality of her husband, should not follow the right to vote.

Possibly equality as to nationality may be a subject that could be placed upon the international agenda, as general agreement upon this matter should, so far as possible, be secured.

GEORGE GRAFTON WILSON.

THE "LITTLE ENTENTE"

The announcement of a formal alliance between Czecho-Slovakia, Roumania, and Jugo-Slavia is an event of profound significance. Doctor Benès, the Minister for Foreign Affairs of Czecho-Slovakia, is quoted to have said at Belgrade:

We know the Magyars as a fantastic nation, who desire to expand, and who cannot easily adapt themselves to the present situation. We must, therefore, establish guarantees. Our alliance is not a question of only our two States, but a European question.¹

This statement might well serve as a text for a general criticism of the alliance, but we have also a further pregnant statement by Doctor Benès in *Le Matin* of August 30, 1920, which is of great interest:

It has been our wish to prove to Europe that the former Austria-Hungary is no longer necessary to Europe, and that even the idea of any kind of Danube Confederation may be quietly and permanently abandoned, because we ourselves can unite in a group and establish order and close coöperation without the creation of political and economic unity which would injure the various States concerned.

We wish to prove that the Allies, in destroying the former monarchy, have not committed a political error.²

It is lamentably true that, as the result of the decisions of the Paris Peace Conference, the term "fantastic nation" employed by Doctor Benès may properly be applied to Hungary. Deprived of essential resources, bleeding at many of its economic arteries by reason of the amazing surgical operation performed on Hungary, and separated from some six millions of their fellow-countrymen, the Magyars truly "cannot easily adapt themselves to the present situation." They cannot consider such a political adjustment as either just or permanent.

Against this common menace, Czecho-Slovakia, Roumania, and Jugo-Slavia, as the chief beneficiaries of the mutilation of Hungary, are compelled to band themselves together in a defensive alliance. An added reason for this combination is the uneasy feeling in Prague concerning a none-too-friendly Poland having possible friendly leanings towards Hungary, which at the time of the Bolshevik invasion offered to come to the help of Poland, when Czecho-Slovakia refused even to permit war supplies to be forwarded to her beleaguered neighbor. A further reason for this alliance is the desire for a Slavic *rapprochement* between Prague and Belgrade through the physically connecting link of Roumania via the grotesque corridor of Ruthenia.

The question of this alliance must be viewed also from the point of view of France, which since the armistice has been feverishly active in the pursuit of that *ignis fatuus* of Talleyrand, Metternich, and Bismarck, termed ironically the "equilibrium of Europe." France would evidently favor, for the purpose of offsetting both Russia and Germany, a belt of strong independent nations reaching from the North Sea to the Ægean, and including Poland, Czecho-Slovakia, Roumania, Jugo-Slavia, and Greece, not even excepting Hungary and Bulgaria as well. In the great game of maintaining an alleged balance of power

¹ *New York Times Current History*, November, p. 354.

² Quoted in the *Contemporary Review* for November, 1920, p. 722.

between various counteracting forces, all kinds of "combinazione" may be invoked, according to the devotees of this fantastic diplomatic game. No one nation nor group of nations may be permitted to be too powerful. Italy must be checked as well as Hungary! What Bismarck euphonistically termed "treaties of reinsurance" between individual members of opposing alliances are even countenanced. A special understanding between Hungary and Roumania is not inconceivable, and in fact is actually under contemplation. Roumania's situation as a neighbor of Bolshevism, and with a new *terra irredenta* populated by large masses of irreconcilable Magyars, is so embarrassing that a *rapprochement* with Hungary would be highly desirable even though it involved a retrocession of Temesvar.

Furthermore, it is impossible to ignore the menacing specter of the former Austro-Hungarian Empire—that Danubian Confederation which Doctor Benès would so gladly conjure away. There is something pathetic in his attempt to argue that there was nothing inherently sound in the economic solidarity that existed between the various component parts of the old Empire, and in his naïve "wish to prove that the Allies in destroying the former monarchy have not committed a political error."

This apprehension lest the artificial arrangements effected by the Paris Conference may not endure is entirely legitimate. It would be folly to ask the overburdened League of Nations to guarantee so false and iniquitous a *status quo*. Out of such a welter of unhappiness and turmoil anything may happen: even the re-creation of a Danubian confederacy embracing Vienna, Prague, and Budapest, not excluding Munich. Austria alone, a proud mendicant dependent on the charity of the world, is bound to seek *points d'appui* wherever she may find them, though she may have to run counter to that cynical clause in the Treaty of St. Germain which guarantees to Austria her "inalienable independence!"

For all these reasons, therefore, Doctor Benès is right in asserting that the "Little Entente" is a European question. The peace of Europe and the whole problem of international organization is vitally affected. Alliances and counter-alliances may seek to preserve a fictitious equilibrium for a season, but the foundations of international law and order have not been laid by the decisions of the Peace Conference at Paris.

International law can only apply successfully between positive political entities that are not subject to serious fluctuations and alterations. It cannot be built on any such foundations as were laid at Paris or rely on such groupings and shiftings of nations as are typified in the "Little Entente."

PHILIP MARSHALL BROWN.

THE UNDERSTANDINGS OF INTERNATIONAL LAW

The scholarly article on the subject of "The Understandings of International Law," by Doctor Quincy Wright in the October number of this JOURNAL,¹ serves to clarify the question raised in the editorial of October, 1919,² regarding the significance of this singular phrase in the preamble of the Covenant of the League of Nations.

Doctor Wright discloses how the term "understandings" has been elsewhere employed by the assumed draftsman of the preamble, though employed in a rather loose manner as contrasted with the concise use of the same term by Dicey in his distinction between "the *understandings* of politics" and "the *commands* of law."³

Doctor Wright is undoubtedly correct in his argument that all law rests ultimately on assent through the exercise of understanding and reason. Once that intelligent assent is accorded, however, law passes into a stage beyond discussion and understanding implying a possible ground for disagreement. We are thinking of a law which has been definitely crystallized by judicial decisions as well as by a long line of established precedents; of a law whose principles have been so clearly enunciated by publicists as to admit of no possibility of *misunderstanding*.

While not assenting to all of his deductions, we may accept as entirely sound Doctor Wright's conclusions: "Thus from the context we gather that 'the understandings of international law' consist of that portion of international law not embodied in formal principles of justice, but sanctioned by general assent and dealing especially with the organization of international society" (page 569). And again: "The constitution of the League of Nations is to be built up of understandings in the twilight zone of law and morality. . . ." (page 580).

It is quite apparent, therefore, that those who drafted the Covenant did not have in mind the great body of existing international law which has passed beyond the stage of discussion and understanding. They were thinking of "the organization of international society," of "the constitution of the League of Nations." In other words, the members of the League of Nations will endeavor to carry out faithfully the *understandings* they may have reached concerning this attempt to organize the family of nations. They have ignored, in the main, the great problem of the firm establishment and orderly development of the existing body of international law.

Doctor Alejandro Alvarez, the distinguished Chilean publicist, has brought out most clearly this distinction between an international public law for the organization of nations, and the pure law of nations, in his most suggestive "Communication to the Academy of Moral and Political Sciences" of October 4, 1919.⁴ He has rendered an important service in repeatedly drawing attention to the fact that, just as Europe has its own political system, so the American Continent has its own peculiar political system, infelicitously characterized in

¹ Vol. 14, p. 565.

³ This JOURNAL, Vol. 14, p. 574.

² Vol. 13, p. 739.

⁴ *Revue des Sciences politiques* du 15 février 1920.

Article XXI of the Covenant as a "regional *understanding*." (Unfortunately there exists no general understanding as to the meaning of the Monroe Doctrine, which the Latin-Americans would gladly formulate as a Pan-American constitutional principle rather than as an expression of policy on the part of the United States.)

To characterize the political organization of Europe or of America as "understandings of international law" would obviously be erroneous. It may be that Europe and America will evolve highly developed political organizations, but these will have as little to do with the great body of international law as the constitutional law of the United States has to do with the Common Law.

Our quarrel, therefore, is not one of mere terminology. Doctor Wright has well said that the term "understandings of international law" as used in the preamble of the Covenant may be taken as the key to the whole project (page 565). There is grave danger lest the main task of vindicating the established principles of international law should be obscured; that in building up an international organization the vastly more important task of laying its foundation on the bedrock of law should be neglected. We must resolutely combat the vicious notion that a super-government may impose sovereign commands, rather than respect the behests of a law which has been created in a natural way through the experience and assent of nations, and the orderly, logical evolution of judicial interpretation and application.

Herein lies the great strength of the position taken by that great jurisconsult, Mr. Root, in his solicitude for frequent conferences of a legislative character for the strengthening of international law, and for a true court of justice which shall guarantee the *jural* evolution of the law of nations, as opposed to *diplo-matic* "understandings" as to the obligations governing the conduct of nations. This is no mere verbal quibble: the issue is fundamental.

PHILIP MARSHALL BROWN.

THE TACNA-ARICA DISPUTE AND THE MONROE DOCTRINE

Whatever may be the ultimate effect of that amendment to the League of Nations Covenant by which was avowed the validity of the Monroe Doctrine as a "regional *understanding*," the attempt to bring the Tacna-Arica dispute before the first League Assembly has drawn attention to the possibility of new glosses upon, and interpretations of, this protean "shibboleth." On the one hand, it might be asserted that Article 21 as amended amounts to a reception of the Monroe Doctrine into international law; upon the other hand, the position might be taken that it remains so far outside the domain of international law that no matter involving it can come within the cognizance or jurisdiction of the League or of any of its instrumentalities. If the latter view prevails, then it would be to the advantage of certain states affected to enlarge the content of the Doctrine so as to avoid having the League consider any question of an intra-American character.

That states may voluntarily refer a question between them to the head of a

European state for an arbitral settlement has not been considered as in contravention of even the most extravagant construction of the Doctrine, and this method of settlement has not infrequently been made use of. Not so, however, the coercive reference to arbitration or other settlement of an American question by one or more European powers. Blaine and Frelinghuysen held that for the United States to join with European Powers in intervening to put an end to the War of the Pacific, 1879-1883, or in a concert for the settlement of the questions growing out of that war, was to act contrary to traditional American policy. Blaine doubted "the expediency of uniting with European Powers to intervene, either by material pressure, or by moral or political influence in the affairs of American states." Frelinghuysen went even farther and declared that "the Department of State will not sanction an intervention of European states in South American difficulties, even with the consent of the parties. The decision of American questions pertains to America herself."

These pronouncements of Blaine and Frelinghuysen were not put forward avowedly as in accordance with the Monroe Doctrine. The latter was "Frelinghuysen Doctrine," to follow Professor Hart. Nevertheless, it may be assumed that in the background lay the Monroe Doctrine and that Frelinghuysen had it in mind that there was a logical and necessary connection between his position and Monroe's original idea; it was the last word in the "Doctrine of the Two Spheres." Incidentally it may be remarked that Peru considered that the refusal of the United States to join with European Powers to stop the war was based upon the Monroe Doctrine and that therefore the United States should have singly assumed the responsibility for ending the war. "The nation that after having established the Monroe Doctrine as the fundamental principle governing her international policy, extended it to the point of excluding the European Powers from all intervention in questions affecting American politics—it was the duty of that great nation to take a very different stand in the Pacific question." So wrote a Peruvian publicist after the war had ended so disastrously for Peru. The Treaty of Ancón was the outcome and the immediate basis of the Tacna-Arica dispute. The association of the Monroe Doctrine with this matter is thus seen to be of long standing.

As all the world knows, the Treaty of Ancón remains unexecuted. The plebiscites which were to have decided the ultimate sovereignty over Tacna-Arica at the end of ten years have never been held. Peru has unswervingly held up to the world the spectacle of an American Alsace-Lorraine. Bolivia's attitude has not been easy to follow, but the later stages of her policy accentuate her desire for a sea-outlet, changing from Antofagasta, involving Chile alone, to Arica, thus making a tripartite dispute resulting in strained relations with Peru and a revolution at home. Peru early announced that she would bring the matter of her lost provinces before the League of Nations. Bolivia indicated that she would insist that the League consider her need for and claim to a Pacific port. Chile, never having agreed to definite arrangements for the plebiscite, has consistently refused to have her possessory or other title subjected to settlement by arbitration. Thus, in 1907, Chile reserved all questions antedating her signature of The Hague Convention for the Pacific Settlement of International

Disputes from the scope of that instrument. As to the League of Nations Covenant, it has been announced from Santiago that Chile acceded to that document with the following reservation: "The Government of Chile reserves the right of considering modifications or reservations to that pact that may be made by nations signatory to the Treaty of Versailles and which have not ratified it up to the present." How such a reservation could have been made by an acceding state is, however, not clear in view of the stipulations of Article I of the Covenant. It is further announced from Santiago that the withdrawal of the question of Tacna-Arica from the Assembly of the League would "prevent the possibility that the League might encroach upon the Monroe Doctrine by considering these American questions in the absence of the United States."¹

The extent to which the United States and the countries to the south of us, in addition to Chile, might consider the consideration by the League of Nations of any American question as an "encroachment upon the Monroe Doctrine" is a question for the future. Mr. Bryan, in a speech made in March, 1916, at Washington, set forth his objections to the program proposed by the League to Enforce Peace and based them to a large extent upon the danger of such an encroachment. He proposed that the plan be "amended so as to provide for the enforcement of the findings by the members of separate groups. All of the nations could join in the formation of a court and thus bring their united wisdom to bear upon an international dispute, leaving the enforcement of the findings to the group to which the nations belong, the American nations enforcing the decisions among themselves, if a majority of them approved of it, the European group doing the same under the same circumstances, and the Oriental group acting in like manner if the Orientals formed a group by themselves."

It is not necessary to analyze this suggestion or to show how superficial it really is. The point is that with Mr. Bryan, as with Secretary Frelinghuysen, there was something in the idea of European Powers forcing decisions upon American states that was antagonistic to traditional American policy as summed up in the Monroe Doctrine. Much the same idea is contained in a recent address by President Brum of Uruguay, who, after paying tribute to the Monroe Doctrine as a bulwark of American independence, proposes an "American Concord" for the settlement of purely American questions. This was not put forward as a part of the Monroe Doctrine, but as ancillary to it and with it equally vital to the preservation of cis-Atlantic interests.

From whatever angle the matter is viewed, there is seen to be a cleft in that solidarity of sentiment which is necessary to the success of any world-wide society of states. If any purely American question involves the Monroe Doctrine, and hence is not to be considered by the League of Nations, or if upon an attempt to consider any such question, there is threatened the withdrawal of the affected American state, the whole organization is weakened. If no purely American question is within the scope of the League's powers, why should any American state have to do with a purely European, or Asiatic, or African question? Whether the Tacna-Arica question is to be considered by the Assembly seems not yet (December 14, 1920) to have been decided. The petitions of

¹ Item in *New York Tribune*, Dec. 8, 1920, dated Santiago, Chile, Nov. 8, 1920.

Peru and Bolivia for the revision of the treaties of 1884 and 1904, or, according to another theory, for the execution of those treaties, are reported to have been referred to former President Poincaré for report to the Assembly. On the other hand, it is stated that the dispute must not come before the present session, but that the matter be left to a special commission for report to the next Assembly.

That the question of Tacna-Arica is outside the range and scope of the Monroe Doctrine, as that doctrine left the pens of Monroe and Adams, is clear enough. Very little is likely to be within its original scope. Nevertheless, in connection with this very dispute there has been from the beginning a considerable sentiment that it ought to be settled solely by American instrumentalities. The insistence of the United States in recent notes to Chile and Bolivia that the matter be settled amicably was regarded by the Argentine journal *La Prensa* as "arrogant," and by the American Chamber of Commerce at Valparaiso as "discourteous and grossly mistaken." And meanwhile the Supreme Court of Chile has held that all persons born within the disputed territory are Chilean nationals. Is the Monroe Doctrine a "regional understanding for securing the maintenance of peace?"

JESSE S. REEVES.

ARBITRATION RESUMED AT THE HAGUE

Advocates of arbitration will be glad to have at their disposal evidence that the world, after four years and more of war, is entering again upon the paths of peace, for in the first week of September, 1920, a special tribunal of the Permanent Court of Arbitration at The Hague rendered awards in the claims of France, Great Britain and Spain, in the so-called cases "of the contested property in Portugal," due to the alleged damage to or destruction of church property belonging to the subjects or citizens of these countries, situated in Portugal, in consequence of the revolution of October 3-5, 1910, overthrowing the monarchy and establishing in its place the Republic of Portugal.

Advocates of arbitration will also be glad to learn that a Tribunal or Arbitration sat for the first time in the Palace of Peace at The Hague, administering justice between nations, that awards between the nations in dispute were rendered for the first time in this Palace of Peace, due to the munificence of an American citizen, Mr. Andrew Carnegie, and that the foundations of this noble structure were laid during the sessions of the Second Peace Conference at The Hague, in 1907.

The awards, technically just, and therefore of interest to the parties in dispute, are nevertheless of a larger interest, inasmuch as the transaction calls the attention of every nation with outstanding claims to the fact that the Court of Arbitration has survived the war, that it is in being, or may be called into being, to fulfill its beneficent mission, and that the work of the two Hague Conferences has weathered the storm before which the proud and apparently invincible German Empire tottered and fell.

The Governments of France and Great Britain appear to have reached an

agreement with Portugal upon the form and extent of the award to be entered in behalf of their subjects or citizens. In legal parlance, they had, through diplomatic channels settled the cases out of court, but to confess their faith in arbitration, they decided to have the settlements entered as a matter of record and to have them given the form and effect of awards of the Permanent Court of Arbitration at The Hague, called into being by their wisdom and foresight, for the first time after the World War.

The original *compromis*, signed at Lisbon, July 31, 1913, provided in its fourth Article that each claim should form the subject of a distinct award rendered "according to the provisions and general principles of law and equity." The procedure was to be summary, in the sense of the Pacific Settlement Convention of 1907, in that it was to be written, not oral.

By agreement of August 13, 1920, between the Governments of France and Great Britain with Portugal, it was provided that in lieu of separate judgments, the Tribunal was authorized "to settle according to equity and by a single judgment or several judgments, the claims which form the subject of the arbitration." The Tribunal decided to enter a single judgment in the case of the French claims, and a single judgment in the case of the British claims, as it held, and rightly, that the claims had their origin in the same facts, and that the claims of each country could and should form but a single judgment.

The grounds upon which judgment was entered in favor of the French and British claimants were: first, that the claimants possessed the property in Portugal, discharged the burdens resulting therefrom, and in so doing introduced capital into the country; second, that it was neither the purpose of Portugal to obtain profit from the seizure of the property, nor the intention of the claimants to "violate the respect due to the laws and institutions of Portugal;" third, in view of these circumstances, the settlement of the claims in favor of French and British claimants was just and equitable, and because of this fact, all such claims were therefore "declared definitely settled and in future extinguished."

It may be mentioned that among the claims presented by France, none were on behalf of the Jesuits, and that the claims of Jesuits originally presented by Great Britain were withdrawn, inasmuch as the Jesuits were unwilling to accept the terms which Portugal was ready to offer and Great Britain willing to receive. Apparently the British Jesuits preferred to maintain their claims in their entirety, trusting to a more favorable future.

The Spanish claims were numerous, so that it was necessary to make nineteen separate awards. Most of these were in behalf of Jesuits. The Spanish Government was apparently unwilling to accept the terms which France and Great Britain found acceptable. These claims therefore were submitted to the Tribunal at The Hague, and in accordance with the protocol, a separate judgment was rendered in each. The awards should be "according to the conventional law eventually applicable and, in the absence thereof, according to the provisions and general principles of law and equity."

Two sovereign nations were involved, and the Tribunal was naturally anxious to decide in such a way as to do justice, but, in doing it, not to offend the *amour propre* of either of the litigating nations. This the Tribunal did with great tact

and skill, which betrayed the hand of the seasoned diplomat as well as of the trained lawyer.

Two of these claims were decided upon their merits. In the first case, the claimant had already received satisfaction in full of the claim; in the second, the claimant had not made out title to the property. In the remaining judgments, seventeen in number, the claimants did not produce the evidence required by Articles 325, 326 and 327 of the Spanish Civil Code, and Article 2411 of the Portuguese Civil Code, to establish the Spanish nationality of the claimants. Under these circumstances the Tribunal stopped upon the threshold, declaring that it could not receive the claims because thereof.

The claims might have been good, or they might have been bad, but the Tribunal could not consider them on their merits, as it was only the claims of Spanish subjects which Spain had the right to present under the agreement with Portugal, and the evidence that the claimants were Spanish subjects was not presented to the Tribunal in the form required by law.

The French and British claims were decided by the Tribunal on September 2, 1920. The Spanish claims were decided on September 4, 1920. At the opening session of the Tribunal, on the morning of September 2, Mr. Root, president of the Tribunal, said on behalf of his two colleagues, Messrs. Savornin Lohman, of Holland, and Lardy, of Switzerland:

At the beginning of the labors of the Tribunal it is a real satisfaction for me to state, after the storms which have raged in the world in the course of these last years, that the Permanent Court of Arbitration still lives. We have the hope and the confidence that it will remain for the good of the world, for the advancement of the reign of public law and of the peace of justice among nations.

At the closing session, on the 4th of September, Mr. Root, speaking again as president of the Tribunal, and on behalf of his colleagues, said:

It remains for me to state that for the first time since the completion of the Peace Palace, an international judgment has been delivered within these walls. Our judgment is, therefore, an inauguration; it is an important day in the history of this building and we hope that this award will be followed by many another in the interest of peace, and of accord among the nations.

May these be but the first of an endless series of awards between nations, decided upon respect for law between the nations of the world.

JAMES BROWN SCOTT.

CURRENT NOTES

ADMISSION OF WOMEN TO MEMBERSHIP IN THE AMERICAN SOCIETY OF INTERNATIONAL LAW

At the meeting of the Executive Council of the American Society of International Law, held in Washington on November 13, 1920, the Council took up and considered the resolution of the Executive Committee of the Society, adopted on January 24, 1920, that "the Executive Council be requested to reconsider the regulation of January 29, 1906, which it has established under Article 3 of the Constitution in regard to membership." This resolution of the Executive Committee was adopted after discussion of the advisability of admitting women to membership in the Society. The Executive Council at its meeting on November 13, after consideration, adopted the following resolution:

Resolved, That the regulation of January 29, 1906, concerning the admission of members be, and it is hereby, amended by changing the word "man" to "person".

The regulation governing admission to membership, therefore, now reads as follows:

Any person of good moral character interested in the objects of the Society may be admitted to membership in the Society.

AMENDMENT OF THE CONSTITUTION OF THE SOCIETY

The Executive Council at the same meeting adopted a resolution reading:

Resolved, That the Executive Council recommends to the Society the amendment of Article 3 of the Constitution by striking out the word "publications" in the third line of paragraph 2 of Article 3 and inserting in lieu thereof the words "American Journal of International Law."

The provision, if amended as recommended by the Executive Council, will therefore read as follows:

Each member shall pay annual dues of five dollars and shall thereupon become entitled to all the privileges of the Society, including a copy of the American Journal of International Law issued during the year.

As the members were informed in the columns of the JOURNAL for July, 1920, page 382, it was found necessary, in order to meet expenses without increasing the dues, among other things, to discontinue sending the annual proceedings to members gratuitously, but to make a separate charge of \$1.50, leaving to the members the option of subscribing or not.

In addition, the Society will issue within a month or two a cumulative index to all the publications of the Society issued from its organization. The publication of this index, the usefulness of which is unquestioned, cannot be undertaken except on the basis of selling it to the members who wish to subscribe.

When the Constitution of the Society was adopted, its framers had in mind the publication only of a quarterly journal, and now, in view of the changed conditions, in order to obviate any doubt as to the authority for issuing other publications for a charge, the Executive Council recommends the foregoing amendment to the Constitution, which will be brought up and considered at the annual meeting of the Society in April next.

In the meantime, in order that the publication of the Proceedings and the index may not be delayed until next summer, the Executive Committee and the Executive Council have authorized the officers of the Society to publish the cumulative index and the Proceedings of the Executive Council and distribute them to the members who subscribe.

PROCEEDINGS FOR 1920

The Proceedings of the meeting of the Executive Council held on November 13, 1920, will be issued in lieu of the Proceedings of the Society for the present year. They will contain a very interesting discussion of the project for the establishment of a Permanent Court of International Justice drafted by the Advisory Committee of Jurists at The Hague last summer upon the invitation of the Council of the League of Nations, acting under authority of Article 14 of the Covenant of the League of Nations. The principal participant in the discussion at the meeting of the Executive Council of the Society was the Honorable Elihu Root, a member of the Advisory Committee which drafted the plan. The members of the Council present at the meeting were of the decided opinion that the discussion well deserved preservation and publication. All members who have subscribed for the Proceedings for 1920 will be sent a copy as soon as published. All members who have not subscribed and who desire to obtain this interesting discussion should promptly remit \$1.50 to the Treasurer.

CUMULATIVE INDEX TO THE AMERICAN JOURNAL OF INTERNATIONAL LAW

The Secretary of the Board of Editors takes pleasure in announcing that the cumulative index to the AMERICAN JOURNAL OF INTERNATIONAL LAW and Supplements, together with the Annual Proceedings of the American Society of International Law, will go to press in January, and will, therefore, shortly be ready for distribution. The index will cover all of the Society's publications from the beginning up to and including the last number of Volume 14 of the JOURNAL, namely, October, 1920. It will contain about 350 printed pages. In addition to the usual subject and author entries, the contents of the volumes have been analyzed and indexed under appropriate headings and cross-referenced. It is believed that this volume will be valuable as a digest for all who are interested in international law, as well as for the possessors of the volumes indexed. Under the authority of the Executive Council, the index will be sold for three dollars in paper covers and four dollars bound in cloth. All members

and subscribers who wish a copy of the index should send in their subscriptions as soon as possible, as the first edition will only be large enough to cover the actual subscriptions. Checks in payment should be made payable to Hon. Chandler P. Anderson, the Treasurer of the Society.

BOUND VOLUMES OF THE SOCIETY'S PUBLICATIONS

In order to meet the wishes of members of the Society who prefer to have the officers of the Society attend to the binding of their annual volumes of the JOURNAL, Supplement and Proceedings, the Business Manager of the Society will be glad to attend to such binding for all members who request it. Owing to the high and uncertain cost of bookbinding, it is not practicable at the present time to make a general arrangement for exchanging bound for unbound sets at a stipulated price. The work will be done at the actual cost of binding, plus postage or express charges. Information regarding the cost of binding will be furnished upon request.

The JOURNAL takes pleasure in calling to the attention of its readers the following notices which have been received for publication:

THE INSTITUTE OF POLITICS

For years the authorities of Williams College have contemplated an Institute of Politics, and although the war necessarily suspended its opening, President Garfield has kept constantly in mind this project, suggested, it is believed, by Philip Marshall Brown, Professor of International Law at Princeton University, and a loyal son of Williams.

The object of the Institute and its relation to Williams College, its membership, and the ways and means through which it is to develop thought and influence public opinion, are briefly and aptly stated in a few paragraphs from a preliminary announcement issued by President Garfield, on behalf of Williams College:

The object of the Institute is to advance the study of politics and to promote a better understanding of international problems and relations.

To this end it is proposed to bring together in Williamstown, for a month or six weeks each summer, a selected company of eminent scholars and special students; to offer courses of lectures by men of national and international distinction; to organize round-table discussions by members of the Institute, and to provide facilities for research and intensive instruction for students in special fields.

The first session will be held in 1921, beginning Thursday, July 28 and closing Saturday, August 27.

The subject chosen for this session is "International Relations." It will be treated in its historical, political, industrial, commercial, and institutional phases.

On May 1, 1913, the Board of Trustees of Williams College approved the inauguration of such an institution and authorized the President of the College to proceed with the plan, which involved the use of the buildings and grounds of the College during the summer recess and the raising of special funds for the expenses of the Institute.

The World War inevitably delayed the project but greatly emphasized the need of the proposed institution. The Board of Advisors was chosen in September, 1919, and the desirability of holding the first session in 1920 considered. In view, however, of the unsettled conditions growing out of the negotiation of the Treaty of Peace and because of the impending presidential campaign in the United States, it was decided to postpone the inaugural session until the summer of 1921.

Through the generosity of an unnamed benefactor ample funds have been provided for the expense of the Institute during the next three years, enabling the management to pay a substantial honorarium to lecturers in addition to their traveling expenses and to place at their disposal furnished houses while in Williamstown.

The round-table conferences will be in charge of professors from American colleges and universities.

The lectures will be open to the public. Classes and round-table conferences may be attended only by members of the Institute on payment of the required registration fee for the session.

Membership in the Institute is limited to members of the faculties of colleges and universities and to those to whom, by reason of special training and experience in the field of politics, invitations are extended.

The registration fee for membership for the session will be \$10.00, payable on or before Saturday, the 30th of July, 1921. Registration blanks may be obtained from the Secretary, Williamstown, Mass.

The officers of administration are, as would be expected, the distinguished President of Williams College, Harry Augustus Garfield, Chairman, and the Treasurer is also appropriately the Treasurer of the College, Mr. Willard Evans Hoyt.

While the Institute is housed by Williams College, and while the Board of Trustees of that institution has placed the seal of its approval upon it, it is, nevertheless, not to be looked upon as a department of that college, in the ordinary sense of the word. Its direction is confided to a Board of Advisors, made up of William Howard Taft, Yale University; Archibald Cary Coolidge, Harvard University; Philip Marshall Brown, Princeton University; John Bassett Moore, Columbia University; Edwin Anderson Alderman, University of Virginia; Jesse Siddal Reeves, University of Michigan; Edward Asahel Birge, University of Wisconsin; Westel Woodbury Willoughby, Johns Hopkins University; Harry Pratt Judson, University of Chicago; James Brown Scott, Carnegie Endowment for International Peace.

There is a large field of usefulness for the Institute of Politics. Its influence will necessarily depend upon the wisdom and the vision with which the experiment is conducted. It should succeed; it is earnestly hoped that it will, and the votaries of politics (other than office-holders) are to be congratulated that a benefactor has been found, willing and able to endow the brains of others. May others imitate his example.

REVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE

The publication of the *Revue de Droit international et de Législation comparée*, interrupted since 1914 by the war and the German occupation of Belgium, is resumed.

Founded in 1869 by G. ROLIN-JAEQUEMYS, ASSER and WESTLAKE, the *Revue de Droit international et de Législation comparée* has from the beginning enjoyed undisputed authority amongst experts in international law. This authority the readers of the *Revue* know was maintained undiminished under the direction of M. EDOUARD ROLIN-JAEQUEMYS, the son of the founder, until the events of 1914 interrupted the publication.

The new direction which now assumes the heavy task of M. EDOUARD ROLIN-

JAEQUEMYS hopes to be faithful to the traditions of impartiality and scientific probity set up by the eminent founders of the *Revue* and which have been its *raison d'être* and the best guarantee of its success.

The war, which has disorganized the world and the treaties which attempt to reorganize it, open up an immense field for research. Limiting its program, therefore, in order the better to carry it out, the *Revue* will confine itself to international law, public and private, without, however, excluding such studies on comparative legislation as have a direct bearing on the law of nations or the conflict of laws.

The *Revue* will devote a large measure of attention to the numerous theoretical and practical problems which arise out of the recent peace treaties. It will endeavor especially to follow up the developments given to the work of the Conference, whether in diplomatic conventions or in the action of the League of Nations and the great international commissions instituted by the treaties.

Besides the signed articles forming the chief part of its contents, the *Revue* will include a new section: "La Revue des Revues" which will enable the reader to follow the general movement of ideas in international law. It will offer, not a simple summary of the contents of periodicals, but brief notices on the chief articles thereof, underlining the points of special legal interest.

Above all the *Revue* will remain what it has never ceased to be: a truly international organ open to all honest scientific collaboration and to the study of all legal problems involved in the international relations of the whole world.

The *Revue* is published under the auspices of MM. EDOUARD ROLIN-JAEQUEMYS, PAUL HYMANS, JAMES BROWN SCOTT, JULES VAN DEN HEUVEL, PAUL FAUCHILLE, ALBERT DE LAPRADELLE, GEORGE GRAFTON WILSON, and under the direction of M. CH. DE VISSCHER, professor in the University of Ghent.

Direction of the *Revue*: 86, Coupure, Ghent.

THE BRITISH YEAR BOOK OF INTERNATIONAL LAW

The need of a publication to express the opinions current in Great Britain on international law has long been felt. In other European countries and in the United States of America there are well-known periodicals on the subject, but in the British Empire, whose international relations are more extensive than those of any other Power, there is no special organ of this kind. Now that the war is over and a new order of things is being established, the need for such a means of expressing British views about the interpretation of the law of nations has greatly increased.

With the object of supplying this want it has been decided to produce *The British Year Book of International Law*, the first issue of which appeared in 1920. The project has the support of the leading professors and teachers of international law in Great Britain, and of other eminent public men who see the great importance of promoting the scientific study of the subject. The late Professor Oppenheim took a leading part in setting the *Year Book* on foot, and Sir Erskine Holland has taken an active interest in its publication.

The Editorial Committee consists of Sir John Macdonell, K.C.B., LL.D., late Quain Professor of Comparative Law in the University of London; Sir

Erle Richards, K.C.S.I., K.C., Chichele Professor of International Law at Oxford; Professor A. Pearce Higgins, C.B.E., LL.D., Professor of International Law at Cambridge and in the University of London; Mr. C. J. B. Hurst, C.B., K.C., Legal Adviser to the Foreign Office; and Mr. E. A. Whittuck, B.C.L., who is also the Business Editor. Mr. Cyril M. Picciotto, of the Inner Temple, Barrister-at-Law, late Whewell Scholar of International Law, Cambridge, and a pupil of Professor Oppenheim, is the Editor of the *Year Book*.

It will be the object of those responsible for the *Year Book* to see that its contents are of permanent scientific value and not merely of passing interest. In addition to articles by competent authorities and reviews of important works on international law, the *Year Book* will contain a great deal of useful information not to be found in any other British publication, such as an exhaustive bibliography of all books and articles relating to the subject published in any country during the current year, and a calendar of events of international significance.

All inquiries should be addressed to the Secretary, *The British Year Book of International Law*, at 77 South Audley Street, London, W. 1.

NOBEL PRIZE ESSAY

The Norwegian Nobel Institute, at Christiania, begs us to bring to the knowledge of students of history and economics, that it has resolved to offer for international competition the following subject: "An account of the history of the Free Trade Movement in the Nineteenth Century and its bearings on the International Peace Movement."

The essays may be written in English, French or German, or in one of the Scandinavian languages.

The author of the eventual prize essay will be remunerated with kr. 5000,—five thousand Norwegian crowns. His work will then become the property of the Norwegian Nobel Institute.

The essays, bearing an epigraph, and accompanied with a sealed envelope containing the name of the author, must be sent to the Norwegian Nobel Institute, 19 Drammensvei, Christiania, before July 1, 1922.

THE EDWARD FRY LIBRARY OF INTERNATIONAL LAW

The late Sir Edward Fry, formerly one of the Lords Justices of Appeal and first delegate of Great Britain at the Second Hague Conference, well known also for the work he did as arbitrator in international disputes, attempted to establish in his lifetime an international law library in London, and not very long before his death expressed regret that this had not been effected. His family, therefore, thought that the creation of such a library would be the best form of memorial to him. They have, accordingly, with the object of setting such a library on foot, handed over to trustees (Viscount Haldane, Sir Erle Richards, Professor Pearce Higgins, E. A. Whittuck, Esq., Sir Cecil Hurst, Professor Goudy and Charles P. Sanger, Esq.) the sum of more than £3,000.

The London School of Economics is most fortunate in having been selected as the place where this Library is to be deposited. The trustees, out of the

sum of money in their hands, have thought well in the first place to purchase from Mrs. Oppenheim the library of her husband, the late Professor Oppenheim, the well known Whewell Professor of International Law at Cambridge. The collection of books on international law which Professor Oppenheim made, comprising about 1,200 volumes, is by far the most complete which there is in England. These, with some works of special personal interest belonging to the late Sir Edward Fry, will, in conjunction with the large number on the subject already in the library of the London School of Economics, form the nucleus of an international law library worthy of this country. The trustees will, as far as possible, keep it up to date and in good order out of the interest on the sum of money that remains in their hands.

The Library will be available for reference to any student of the subject. As soon as funds allow, a catalogue of the books will be printed. A special classification, based on the Library of Congress scheme, has been devised by the Librarian of the London School of Economics, and adequate card catalogues and indexes will be available. The completeness of the Library will depend very largely upon the generosity of government departments, societies and private individuals interested in the subject. Donations of books, pamphlets and periodicals on any aspect of international law, as well as sums of money towards the maintenance of the Library, will be very cordially welcomed by the trustees and should be sent to their Secretary, Mr. B. M. Headicar, Librarian of the London School of Economics, Clare Market, W.C. 2, who will be glad to give information and assistance to students.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary Papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Cur. Hist.*, Current History (New York Times); *Daily digest*, Daily digest of reconstruction news; *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario oficial (Brazil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenossische gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. O. J.*, League of Nations, Official Journal. *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice. *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

March, 1920.

- 25 LATIN MONETARY UNION. Supplementary convention to convention of Nov. 6, 1885, signed at Paris, by Belgium, France, Greece, Italy and Switzerland. Text: *L. N. T. S.*, Sept., 1920, p. 45.

May, 1920.

- 1 THURINGIA. Republic officially proclaimed in Germany. Constitution published May 12, 1920. *Cur. Hist.*, Oct., 1920, 13:146.
- 11 DENMARK—NORWAY—SWEDEN. Additional articles to monetary convention of May 27, 1873, and to supplementary convention of Oct. 16, 1875, signed at Copenhagen by all three countries. Text: *L. N. T. S.*, Sept., 1920, p. 15.
- 29 BELGIUM—GERMANY. Belgium notified Germany that certain bilateral conventions mentioned in Art. 289 of the Treaty of Versailles were again put into force. List of treaties: *Monit.*, Sept. 1, 1920, p. 6469.

June, 1920.

- 20 COSTA RICA—NICARAGUA. Convention signed at San José granting reciprocal use in timber commerce of waters and streams in the vicinity of the frontier. *P. A. U.*, Dec., 1920, p. 640.
- 22-28 INTERNATIONAL MISSIONARY CONFERENCE. Held at Crans, near Geneva, for discussion of changed conditions under which missionaries must work as result of the war. *Adv. of peace*, Nov., 1920, p. 341.

- 29 CZECHO-SLOVAK REPUBLIC—GERMANY. An economic convention signed at Prague with provisions relating to finance, delivery of coal, political regulations and application of Art. 297 of Treaty of Versailles; together with a protocol relating to war loans. *B. Inst. Interméd. Int.*, Oct., 1920, 3: 392-401.

July, 1920.

- 2 EXTRADITION. Treaty of Nov. 26, 1880, between Switzerland and Great Britain, extended to Federated Malay States of Perak, Selangor, Negri Sembilan and Pahang. *L. N. T. S.*, Sept., 1920, p. 53.
- 3 JAPAN—GREAT BRITAIN. Anglo-Japanese declaration signed at Spa, informing the League of Nations that the Anglo-Japanese agreement of July 13, 1911, if continued after July, 1921, will be in a form consistent with the Covenant. Text: *L. N. T. S.*, Sept. 20, 1920, p. 23.

August, 1920.

- 3-5 LEAGUE OF NATIONS. Permanent Advisory Commission on Naval, Military, and Air Questions held first meeting at San Sebastian. *L. N. O. J.*, Sept., 1920, p. 346.
- 9 ARMENIA. Armenians of Cilicia proclaim their independence under protection of France and form provisional government. *R. des ques. coloniales*, July-Sept., 1920, p. 127.
- 10 FRANCE—GREAT BRITAIN—ITALY. Tripartite agreement respecting Anatolia signed at Sèvres, which divided a large part of Turkey into zones of special influence. *G. B. Treaty ser.* No. 12 (1920).
- 10 GEORGIA—GERMANY. Germany decided to send official representative to Georgia. *R. des ques. coloniales*, July-Sept., 1920, p. 127.
- 11 FRANCE—SOVIET RUSSIA. Recognition by France of the *de facto* government of General Wrangel announced. *Nation* (N. Y.), Oct. 13, 1920, 111: 406.
- 14 CZECHO-SLOVAK REPUBLIC—SERB-CROAT-SLOVENE STATE. Defensive convention concluded. Summary: *Times*, Nov. 12, 1920, p. 11.
- 15 PARAGUAY. Dr. Manuel Gondra inaugurated President. *Pan Amer. R.*, Sept., 1920, p. 34.
- 17 AUSTRIAN PEACE TREATY, St. Germain, Sept. 10, 1919. Ratified by Cuba. *P. A. U.*, Dec., 1920, p. 641.
- 17 BALTIC UNION. Conference of Finland, Esthonia, Latvia, Lithuania and Poland held at Riga to lay foundation for a political and economic entente. *Contemp. R.*, Oct., 1920, p. 579.
- 27 CENTRAL AMERICAN UNION. Congress of Salvador passed resolution favoring political unity of the five republics. *Cur. Hist.*, Oct., 1920, 13:107.
- 31 ECUADOR. Dr. J. L. Tamayo inaugurated President. *Cur. Hist.*, Oct., 1920, 13: 109.

September, 1920.

- 1 CHINA—JAPAN. Dissolution of military pact for combined war-time defense of China's borders granted by Japan. *Wash. Post*, Sept. 3, 1920, p. 6.

- 1-15 EASTERN PEOPLES' CONFERENCE. Held at Baku, Azerbaidjan, under auspices of the Third or Communist International of Moscow. *Press notice*, Sept. 27, 1920.
- 2 LATVIA—SOVIET RUSSIA. Peace treaty signed Aug. 11, 1920, ratified by Latvia. *Cur. Hist.*, Dec., 1920, 13:456.
- 2-4 PERMANENT COURT OF ARBITRATION. First tribunal since the war met at The Hague, with Elihu Root as chairman. Decision rendered in Portuguese church property case. *Temps*, Sept. 4, 1920, p. 2.
- 3 AUSTRIA—GERMANY. An economic convention, and convention regulating various financial questions, signed. *Temps*, Sept. 4, 1920, p. 4.
- 5 AALAND ISLANDS. Report of the International Committee of Jurists made public. Text: *L. N. O. J.*, Oct., 1920, Spec. suppl. No. 3.
- 5 ERNEST NYS. Eminent Belgian professor of international law died at age of 69. *Temps*, Sept. 7, 1920, p. 2.
- 5 MEXICO. General Alvaro Obregon elected President for term of six years, beginning Dec. 1, 1920. *Cur. Hist.*, Oct., 1920, 13:105.
- 8 FRANCE—SOVIET RUSSIA. Millerand addressed wireless communication to Soviets demanding release before Oct. 1 of all French prisoners detained against their will in Russia. *Temps*, Sept. 9, 1920, p. 1.
- 8 INTERNATIONAL AERONAUTICAL FEDERATION. Conference opened in Geneva. *Temps*, Sept. 9, 1920, p. 4.
- 8 RUMANIA. Text of note published which Rumanian delegates to the Peace Conference sent to Allies at Spa, on subject of apportionment of German indemnity. Summary: *Temps*, Sept. 10, 1920, p. 4.
- 11 ICELAND. A minister to represent Iceland at Danish Court appointed by King Christian. *Cur. Hist.*, Oct., 1920, 13:71.
- 12-13 AIX-LES-BAINS CONFERENCE. Premiers of France and Italy met to adjust differences between the two countries, and issued declaration concerning essential conditions for restoration of peace. Text: *Temps*, Sept. 15, 1920, p. 1.
- 12 GERMANY—LITHUANIA. Lithuanian government addressed protest to Berlin against violation of its territory, which Germany has permitted in allowing soldiers of the Red army, interned in West Prussia, to cross Lithuania. *Temps*, Sept. 14, 1920, p. 4.
- 12 RUMANIA—SOVIET RUSSIA. Rumania sent favorable reply to Soviet's peace proposal. *Wash. Post*, Sept. 13, 1920, p. 3.
- 14 GERMAN PEACE TREATY, Versailles, June 28, 1919. Rumania deposited ratification of treaty, making twenty-sixth nation to approve the compact. *N. Y. Times*, Sept. 18, 1920, p. 15.
- 14 MEXICO. Executive decree issued amending Art. 15 of President Carranza's executive decree of Aug. 30, 1919, regarding presentation of damage claims against Mexican Government. New decree extends until Feb. 5, 1921. *Press notice*, Sept. 14, 1920.
- 15 BULGARIAN PEACE TREATY, Neuilly-sur-Seine, Nov. 27, 1919. Yugoslav Parliament approved ratification of treaty. *Temps*, Sept. 16, 1920, p. 1.

- 15 FRANCE—SWITZERLAND. The presidents of the two countries held a conference at Lausanne, issuing communiqué stating that agreement had been reached on certain political and economic questions discussed. *Times*, Sept. 16, 1920, p. 9.
- 13 BULGARIA—GREECE. Joint commission appointed by Greece, Bulgaria and League of Nations to execute reciprocal emigration convention, signed Nov. 27, 1919. *Temps*, Sept. 17, 1920, p. 1.
- 16 DESCHANEL, PAUL. Resigned as President of France. *N. Y. Times*, Sept. 17, 1920, p. 17.
- 16-21 LEAGUE OF NATIONS COUNCIL. Ninth session held in Paris. Purchase of Hotel National in Geneva approved; transfer of districts of Eupen and Malmedy to Belgium recognized; Polish-Lithuanian controversy and Aaland Islands question considered. *Cur. Hist.*, Dec., 1920, 13:364; *N. Y. Times*, Sept. 21, 1920, p. 17.
- 18 GUATEMALA. Carlos Herrera assumed office as constitutional president. *Wash. Post*, Sept. 24, 1920, p. 6.
- 19 INTERALLIED CONFERENCE FOR THE PROTECTION OF DISABLED IN WAR. Fourth conference opened at Brussels. *Temps*, Sept. 20, 1920, p. 4.
- 19 NORWAY—SOVIET RUSSIA. Proposal for commercial treaty handed to Norwegian Government by Litvinoff. *N. Y. Times*, Sept. 20, 1920, p. 5.
- 20 LITHUANIA—POLAND. League of Nations Council fixed boundaries and sent military commission to disputed territory. After temporary suspension of hostilities, fighting was renewed and Vilna occupied by Polish General Zeligowski on Oct. 9. *Cur. Hist.*, Dec., 1920, 13:454.
- 21 INTERNATIONAL CONGRESS AGAINST ALCOHOLISM. Fifteenth Congress opened in Washington. *Wash. Post*, Sept. 21, 1920, p. 2.
- 21-Nov. 20 POLAND—SOVIET RUSSIA. Peace conference at Riga began Sept. 21. *N. Y. Times*, Sept. 22, 1920, p. 17. Armistice signed Oct. 5. *N. Y. Times*, Oct. 7, 1920, p. 1. Peace terms and armistice agreement signed at Riga Oct. 11. Text: *Cur. Hist.*, Dec. 1920, 13:407. Ratified by Polish Diet, Oct. 23. *Times*, Oct. 25, 1920, p. 9. Ratification by Soviet Russia announced Oct. 27. *Temps*, Oct. 29, 1920, p. 1. Agreement signed by both countries Nov. 14, for withdrawal of Polish troops Nov. 19. *Wash. Post*, Nov. 16, 1920, p. 4. Peace negotiations broken off Nov. 20, because Poland failed to withdraw troops or keep armistice agreement. *N. Y. Times*, Nov. 22, 1920, p. 1.
- 22 AUSTRIA—GREAT BRITAIN. Notice given to Austrian Government that bilateral treaties relating to extradition and money orders are revived from date of notice. Text: *Lond. Ga.*, Nov. 2, 1920, p. 10618.
- 22 ALEXANDRE MILLERAND. Elected President of France. *Cur. Hist.*, Nov., 1920, 13:267.
- 22 MARINE FISHERIES CONFERENCE. Informal conference held in Ottawa between representatives of United States, Canada and Newfoundland, in regard to investigations in interests of marine fisheries of Atlantic and Pacific coasts. *Press notice*, Oct. 15, 1920.

- 24-Oct. 8 INTERNATIONAL FINANCIAL CONFERENCE. Held at Brussels to study financial crisis and means of remedying dangerous consequences ensuing from it. Summary of proceedings: *New Europe*, Oct. 14, 1920, p. 21; *Cur. Hist.*, Dec., 1920, 13:470.
- 24 JAPAN—SOVIET RUSSIA. Military agreement concluded, supplementing that of April 29, 1920. Summary: *Soviet Russia*, Dec. 11, 1920, p. 593.
- 24 UNITED STATES. Department of State made known President Wilson's position in declining to carry out section of Merchant Marine Act of June 5, 1920, instructing him to notify foreign governments within 90 days concerning termination of certain clauses of commercial treaties. *Wash. Post*, Sept. 25, 1920, p. 1.
- 26 AUSTRIA—ITALY. Royal decree issued by which the Treaty of Saint-Germain was ratified, and territories assigned to Italy became part of the kingdom. *G. U.*, Oct. 1, 1920, p. 3028.

October, 1920.

- 1 AUSTRIA—GERMANY. Austrian National Assembly adopted motion calling on government to carry out within six weeks a plebiscite on union of Austria with Germany. *N. Y. Times*, Oct. 5, 1920, p. 17.
- 1 INTERNATIONAL CLEARING HOUSE FOR COMMERCIAL EXCHANGES. Organization proposed by Premier Delacroix of Belgium at International Financial Congress. *Wash. Post*, Oct. 2, 1920, p. 1; *Times*, Oct. 2, 1920, p. 9.
- 1 PALESTINE. Jewish National Assembly with 200 delegates met in Jerusalem. *Cur. Hist.*, Nov., 1920, 13:256.
- 1 UNIVERSAL POSTAL CONGRESS. Seventh Congress opened in Madrid to revise international postal rates, etc. *Temps*, Oct. 3, 1920, p. 2; *Union postale*, Oct. 1, 1920, p. 145.
- 1-3 GERMAN PEACE CONGRESS. Ninth conference, consisting of representatives of twelve German peace societies, held in Brunswick. *Friedenswarte*, Oct./Nov., 1920, p. 218.
- 1-6 GREAT BRITAIN—SOVIET RUSSIA. Notes exchanged regarding British prisoners. Summary: *N. Y. Times*, Oct. 9, 1920, p. 1.
- 1-13 GREAT BRITAIN—SOVIET RUSSIA. Correspondence on trade relations between Curzon and Soviet Government made public. Summary: *Times*, Oct. 9-11, 15, 1920.
- 2 CHILE. Señor Alessandri declared legally elected president. *Times*, Oct. 2, 1920, p. 9.
- 5 AUSTRIA—CZECHOSLOVAK REPUBLIC. Minorities agreement signed at Prague, May 18, 1920, ratified by both countries and put in force. *Temps*, Oct. 6, 1920, p. 4.
- 5 GREAT BRITAIN—SOVIET RUSSIA. Draft trade agreement made public. Text: *Times*, Oct. 5, 1920, p. 10; *Nation* (N. Y.), Nov. 10, 1920, p. 542.
- 5-8 AUSTRIA—FRANCE. Resolutions relating to application of section IV of part X of Treaty of Saint-Germain [property rights and private interests] approved by both governments. Text of resolutions: *Bibl. de la France*, Oct. 22, 1920, No. 43.

- 5-8 INTERNATIONAL FREE TRADE CONGRESS. Held in London. *Temps*, Oct. 7 and 9, 1920.
- 3 INTERNATIONAL LABOR CONVENTIONS. Information published regarding programs made in various countries in ratification of draft conventions adopted at Washington labor conference. *I. L. O. B.*, Oct. 6 and Nov. 24, 1920.
- 7 GERMAN REPARATIONS. New request from Germany for definite reparations sum brought to Paris by Charles Laurent, French ambassador to Germany. *Wash. Post*, Oct. 9, 1920, p. 1.
- 7 INTERNATIONAL LABOR CONGRESS. Held at Brussels to consider creation of an international office of statistics, prices and quantities under League of Nations. *Cur. Hist.*, Dec., 1920, 13:366.
- 8 CHINA—SOVIET RUSSIA. Foreign Office statement, made public by Chinese legation, said that recent Chinese mandate revoking diplomatic recognition of Russian representatives in China merely suspended the treaties and did not terminate them. *Wash. Post*, Oct. 9, 1920, p. 3.
- 8 EGYPT. Egyptian Nationalist Party, meeting in Paris, decided to accept the British plan for Egyptian independence, with a reservation demanding that references to British protectorate in Versailles Treaty be eliminated. *Wash. Post*, Oct. 9, 1920, p. 1.
- 8 GERMANY—LATVIA. Temporary agreement of July 15, 1920, in respect of the resumption of relations ratified. *Deutsch. Reichs.*, Oct. 12, 1920, ser. 231. Text of treaty: *Board of Trade J.*, Sept. 9, 1920, p. 312.
- 8 INTERNATIONAL COMMUNICATIONS CONFERENCE. Preliminary session opened in Washington to prepare for conference of world-wide character on cable, radio, telegraph and telephone problems. *Wash. Post*, Oct. 9, 1920, p. 9.
- 10 AUSTRIA—SERB-CROAT-SLOVENE STATE. Plebiscite held in southern zone, to decide whether Klagenfurt region would go to Yugoslavia or remain with Austria, resulted in favor of union with Austria. *Cur. Hist.*, Nov., 1920, 13:249.
- 11 INTERNATIONAL ECONOMIC CONFERENCE. Second meeting held in London to consider restoration of Europe. *Times*, Oct. 12, 1920, p. 12.
- 13 AUSTRIA—GREAT BRITAIN. Egypt (Treaty of peace, Austria). Order in council issued, for application and enforcement of provisions of Treaty of St. Germain regarding property of nationals. *Lond. Ga.*, Oct. 15, 1920, p. 9979.
- 14 FINLAND—SOVIET RUSSIA. Peace treaty signed at Dorpat. *N. Y. Times*, Oct. 15, 1920, p. 17; *Cur. Hist.*, Dec., 1920, 13:455.
- 15 CHINESE CONSORTIUM. Organization completed at conferences in Washington and New York. Final agreement signed. *Far Eastern R.*, Nov., 1920, 16:624; *Cur. Hist.*, Dec., 1920, 13:459.
- 5 UNITED STATES—VENEZUELA. Commercial travelers' convention, signed July 3, 1919, and ratified by both countries on Aug. 18, 1920, proclaimed. *U. S. Treaty series*, No. 648.

- 20 ARMENIA. League Council decided to ask Supreme Council to appoint a mandatory power for Armenia. *N. Y. Times*, Oct. 22, 1920, p. 17.
- 20 CHINA—UNITED STATES. Commercial convention signed, to bring into effect as regards imports into China from United States, the revised tariff schedules recommended by International Tariff Commission sitting at Shanghai in 1918. *Press notice*, Oct. 21, 1920.
- 20 LIENZ REPUBLIC. Lienz Borough of the Eastern Tyrol proclaimed itself a republic. *Wash. Post*, Oct. 23, 1920, p. 6.
- 20 WILHELM II OF GERMANY. Bonar Law announced in House of Commons that British Government would not bring him to trial. *Temps*, Oct. 21, 1920, p. 1.
- 21 ARMENIA—SOVIET RUSSIA. Russia issued ultimatum to Armenia demanding permission to transport Bolshevist troops through Armenia, and asked Armenia to repudiate treaty of Sèvres with Turkey. Rejected by Armenia. *N. Y. Times*, Oct. 22, 1920, p. 17.
- 21 INTERNATIONAL PASSPORT CONFERENCE. In session at Paris, adjourned after unanimous adoption of resolutions embodying changes in present passport system of chief nations of the world. *N. Y. Times*, Oct. 22, 1920, p. 17.
- 22 ARGENTINE REPUBLIC—UNITED STATES. Commercial treaty governing reciprocal rights of commercial travelers in both countries signed. *Wash. Post*, Oct. 23, 1920, p. 6.
- 22-28 LEAGUE OF NATIONS COUNCIL. Tenth session, held in Brussels, discussed budget, minorities, plan for international court, Polish-Lithuanian controversy, etc. *Times*, Oct. 21, 1920; *Cur. Hist.*, Dec., 1920, 13:365.
- 25 GREECE. King Alexander died. *N. Y. Times*, Oct. 26, 1920, p. 1.
- 25 MANDATES. French Government informed League of Nations Council that it is in agreement with other Allied Powers as to the "A" Class of mandates, viz., Mesopotamia and Palestine; but not yet as to B and C Classes which cover former German possessions. *Times*, Oct. 26, 1920, p. 9.
- 25 NICARAGUA. Diego M. Chamorro elected president. *Cur. Hist.*, Dec., 1920, 13:465.
- 26 BOLIVIA. Provisional government recognized by France. *Cur. Hist.*, Dec., 1920, 13:463. Recognized by Great Britain. *Cur. Hist.*, Oct. 1920, 13:108.
- 26 GERMANY—GREAT BRITAIN. Great Britain renounced her right, under Versailles Treaty, to make further seizures of property of German nationals in Great Britain in case of voluntary default by Germany in respect of her reparation obligations. *Cur. Hist.*, Dec., 1920, 13:429; *Nation* (N. Y.), Nov. 24, 1920, p. 593.
- 27 FIUME. Constitution of the free state of Fiume, dated Aug. 27, 1920, made public. English text: *Nation* (N. Y.), Oct. 27, 1920, p. 484.
- 27 LEAGUE OF NATIONS. Headquarters of League moved from London to Geneva. *N. Y. Times*, Oct. 28, 1920, p. 17.

- 28 BESSARABIA. Treaty signed at Paris by France, Great Britain, Italy and Rumania, giving sovereignty over Bessarabia to Rumania. *Temps*, Oct. 29, 1920, p. 4; *Cur. Hist.*, Dec., 1920, 13:436.
- 28 LITHUANIA—POLAND. League of Nations Council decided to refer the quarrel, including occupation of Vilna, to a plebiscite. *Cur. Hist.*, Dec., 1920, 13:364.
- 29 ITALY—SWITZERLAND. Decree issued promulgating the agreement of July 21, 1920, which prolonged the Berne agreement of July 1, 1918, and modified the convention of Oct. 13, 1909, relating to St. Gothard railway. *G. U.*, Nov. 23, 1920, p. 3611.
- 30 NOBEL PRIZE. Announcement made of award for literature for 1920 to Knut Hamsun, of Norway. *N. Y. Times*, Oct. 31, 1920, p. 18.

November, 1920.

- 1 CUBA. Dr. Alfredo Zayas elected president. *Cur. Hist.*, Dec., 1920, 13:465.
- 2 FRANCE—MOROCCO. Decree issued relative to the judicial organization of the French protectorate over Morocco. *J. O.*, Nov. 5, 1920, p. 17466.
- 3 INTERNATIONAL CHAMBER OF COMMERCE. American section organized with headquarters in Washington, D. C. *Daily Digest*, Nov. 3, 1920.
- 3 NORWAY—SPAIN. Norway notified Spain that commercial treaties of June 27, 1892, and Aug. 25, 1903, would cease to be effective on Feb. 3, 1921. *Ga. de Madrid*, Nov. 15, 1920, p. 722.
- 4 CZECHOSLOVAK REPUBLIC—FRANCE. A commercial treaty and a railway convention signed. *Temps*, Nov. 8, 1920, p. 4; *N. Y. Times*, Nov. 8, 1920, p. 15.
- 5 FRANCE—GREAT BRITAIN. Convention concluded to regulate exercise of Inter-Allied High Command in Constantinople. *Times*, Nov. 6, 1920, p. 9; *Cur. Hist.*, Dec., 1920, 13:441.
- 5 GERMANY—ITALY. Economic restrictions on traffic between the two countries abolished by Italian Government. *Cur. Hist.*, Dec., 1920, 13:429.
- 6 CHILE—SWEDEN. Arbitration convention ratified by Chile. *Wash. Post*, Nov. 8, 1920, p. 6.
- 3 EGYPT—GREAT BRITAIN. Milner-Zaghlul memorandum on future of Egypt made public. Text: *Times*, Nov. 6, 1920, p. 9; *Nation* (N. Y.), Dec. 15, 1920, p. 700.
- 3 CZECHOSLOVAK REPUBLIC—FRANCE. Treaty of commerce signed by both countries in Paris. *Temps*, Nov. 6, 1920, p. 4.
- 5 GREAT BRITAIN—SWITZERLAND. Provisional convention regulating aerial circulation signed at Berne. Text: *L. N. T. S.*, Sept., 1920, p. 37.
- 7 CHILE—MEXICO. New Mexican Government recognized by Chile. *Evening Star*, Nov. 8, 1920, p. 2.
- 7 TURKISH PEACE TREATY, Sèvres, Aug. 10, 1920. Turkish Government addressed a note to the Entente Powers declaring present time inopportune for ratification of the Treaty of Sèvres. *Wash. Post*, Nov. 8, 1920, p. 7; *Cur. Hist.*, Dec., 1920, 13:444.

- 8 MARITIME COMMISSION. First session of joint commission set up by the International Labor Conference at Genoa on July 9, 1920, met at Geneva. Proceedings: *I. L. O. B.*, Nov. 17, 1920.
- 9 CANADA—WEST INDIES. Trade agreement made effective in British West Indies. *Evening Star*, Nov. 9, 1920.
- 11 ARMENIA—TURKEY. Armistice signed. *Wash. Post*, Nov. 12, 1920, p. 3. Summary of terms: *Press notice*, Nov. 15, 1920.
- 11 CZECHOSLOVAK REPUBLIC—SERB-CROAT-SLOVENE STATE. Text of treaty published at Belgrade. Summary: *Cur. Hist.*, Dec., 1920, 13:434.
- 11 FRANCE—GERMANY. France announced details of plan for fixing reparations to be made by Germany. *Cur. Hist.*, Dec., 1920, 13:428.
- 12 AUSTRIA. Request for admission to League of Nations filed by Austrian Government. *N. Y. Times*, Nov. 13, 1920, p. 1.
- 12 FRANCE—GREAT BRITAIN. Agreement reached concerning procedure to be followed with regard to reparations due by Germany. Summary: *N. Y. Times*, Nov. 13, 1920, p. 14; *Times*, Nov. 8, 1920, p. 12.
- 12 FRANCE—ITALY. Decree issued promulgating the convention signed at Rome on Aug. 27, 1920, relating to importation of silkworm eggs from France to Italy. *J. O.*, Nov. 21, 1920, p. 18744.
- 12 ITALY—SERB-CROAT-SLOVENE STATE. Treaty settling Adriatic dispute and disposal of Fiume signed at Rapallo. Summary: *Times*, Nov. 13, 1920, p. 9; ratified by Yugoslav cabinet on Nov. 19. *Wash. Post*, Nov. 21, 1920: rejected by d'Annunzio. *N. Y. Times*, Nov. 20, 1920, p. 15; ratified by Italian Parliament on Nov. 27, 1920. *Press notice*, Nov. 29, 1920.
- 13 BELGIUM—BRAZIL. Financial convention signed. Summary: *Temps*, Nov. 18, 1920, p. 2.
- 13 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Ratified by Hungary. *N. Y. Times*, Nov. 14, 1920, p. 2; *Cur. Hist.*, Dec., 1920, 13:431.
- 15 ECONOMIC COUNCIL OF LEAGUE OF NATIONS. Appointed by League Council. *N. Y. Times*, Nov. 15, 1920, p. 2.
- 15 FINANCIAL COUNCIL OF LEAGUE OF NATIONS. Appointed by League Council to carry out recommendations of Financial Conference at Brussels. *N. Y. Times*, Nov. 15, 1920, p. 2.
- 15 JAPAN—UNITED STATES. Announced that treaty with Japan has been drafted, affecting future Japanese immigration. *N. Y. Times*, Nov. 16, 1920, p. 17.
- 15-30 LEAGUE OF NATIONS ASSEMBLY. Met at Geneva Nov. 15. Paul Hymans elected permanent president. Six committees appointed, on which each of the 42 nations of Assembly is represented: (1) General Organization, (2) Technical Organization, (3) Permanent Court of International Justice, (4) Organization of the Secretariat and Finances of the League, (5) Admission into the League, (6) Mandates, Armaments and the Economic Weapon. On Nov. 17, Delegate Pueyrredon, of Argentina, appealed for admission of all sovereign states to the League. On Nov. 20, a motion that Spanish should become one of the official languages of the League was presented by 18 nations; revision of Covenant also consid-

- ered. On Nov. 22, Council directed to select a Power to negotiate with Mustapha Kemal, of Turkey, in Armenian difficulty. On Nov. 25, invitation sent to President Wilson to mediate for Armenians. Permanent Mandate Committee appointed on Nov. 26. Assembly adopted permanent rules of procedure on Nov. 30. *Jour. of First Assembly of L. N.*, Nov. 15-Dec. 1, 1920; *N. Y. Times*, Nov. 16-Dec. 1, 1920.
- 15 MANDATES COMMISSION OF LEAGUE OF NATIONS. Permanent commission appointed by League Council. *N. Y. Times*, Nov. 15, 1920, p. 2.
 - 16 GERMANY—GREAT BRITAIN. Establishment of Mixed Arbitration Tribunal under Art. 304 of Treaty of Versailles, announced. *London Ga.*, Nov. 16, 1920, p. 11113.
 - 17 INTERNATIONAL SEAMEN'S CODE. Report of Director of International Labor Office published. *I. L. O. B.*, Nov. 17, 1920.
 - 18 DANZIG—POLAND. M. Paderewski signed for Poland the convention which had already been signed for Danzig. *Times*, Nov. 19, 1920, p. 9.
 - 18 GREECE. Ratified draft conventions adopted at Washington Labor Conference. *Times*, Nov. 20, 1920, p. 9.
 - 18 LITHUANIA—POLAND. League of Nations Council decided to send composite force to Lithuania to maintain order and supervise plebiscite to be held in Vilna. *N. Y. Times*, Nov. 19, 1920, p. 1.
 - 19 CARINTHIA. Interallied plebiscite commission handed over entire plebiscite district to Austrian authorities. *Wash. Post*, Nov. 21, 1920, pt. 2, p. 4.
 - 19 GERMANY. Note of protest to League of Nations made public, in which Germany states that she no longer considers herself bound by clause of Versailles Treaty yielding colonies, on plea that allies broke pact. *Wash. Post*, Nov. 20, 1920, p. 1.
 - 20 BELGIUM—GERMANY. Agreement reached for temporary joint commission for arbitration of disputes between Belgian merchants and German authorities in occupied territories. *Monit.*, Nov. 20, 1920, p. 9311.
 - 20 COSTA RICA—HONDURAS—NICARAGUA. Agreement signed, looking toward settlement of Central American problems relating to boundaries, union of Central American states, etc. Summary: *N. Y. Times*, Nov. 21, 1920, p. 19.
 - 25 ARMENIA. League of Nations sent to the United States, as well as to League members, an invitation to volunteer for mediating between Armenia and Mustapha Kemal. *N. Y. Times*, Nov. 26, 1920, p. 1.
 - 25 FRANCE—UNITED STATES. American delegates to International Postal Congress reached agreement with French postal authorities for an increase in weight of parcel-post packages, and insurance for same. *Evening Star*, Nov. 7, 1920, pt. 2, p. 2.
 - 26 GREAT BRITAIN—UNITED STATES. Reply of American Government, dated Nov. 20, 1920, to British note of Aug. 9, 1920, with reference to mandate rights under peace treaties, made public. *Wash. Post*, Nov. 26, 1920, p. 1; *N. Y. Times*, Nov. 26, 1920, p. 1.

- 26 INTERNATIONAL COURT OF JUSTICE COMMISSION OF THE LEAGUE OF NATIONS. Decided that plan prepared by Advisory Committee of Jurists shall stand as amended by League of Nations Council at Brussels. Elimination of obligatory jurisdiction in plan approved. *Wash. Post*, Nov. 27, 1920, p. 3.
- 28 FRANCE—GREAT BRITAIN. Agreement cancelled, whereby England supplied France with 45 per cent. of England's output of export coal. *Evening Star*, Nov. 29, 1920, p. 2; *Temps*, Nov. 30, 1920, p. 1.
- 28 INTERNATIONAL COUNCIL OF WAR VETERANS. Organized in Paris by delegations from France, Great Britain, United States, Italy, Belgium, Greece, Jugoslavia, Czechoslovakia, Portugal, Poland and Rumania. *N. Y. Times*, Nov. 29, 1920, p. 17.
- 30 ARMENIA. President Wilson accepted invitation of League of Nations Council to mediate in Armenian question. *N. Y. Times*, Dec. 1, 1920, p. 1.
- 30 ARMENIA—TURKEY. Peace terms to Armenia announced by French Foreign Office. Summary: *N. Y. Times*, Dec. 1, 1920, p. 2.
- 30 PAN-AMERICAN POSTAL UNION. Formed at International Postal Congress in Madrid. Comprises all American states except Canada and British colonies. Spain has adhered to the union. *Times*, Dec. 1, 1920, p. 11.
- 30 UNIVERSAL POSTAL CONVENTION. Signed at Madrid. *Times*, Dec. 1, 1920, p. 11.

INTERNATIONAL CONVENTIONS

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908. Protocol, Berne, Mar. 20, 1914.

Adhesion:

Austria, Sept. 11, 1920. *Bibl. de la France*, No. 43, p. 223.

POSTAL CONVENTION. Madrid, Nov. 14, 1920.

Signatures:

Spain, United States and Latin-American countries. Nov. 14, 1920. *Wash. Post*, Nov. 15, 1920, p. 6; *Times*, Dec. 1, 1920, p. 11.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, Mar. 20, 1883. Revision, Brussels, Dec. 14, 1900; Washington, June 2, 1911.

Adhesion:

Rumania, Aug. 26, 1920. *Deutsch. R.*, Oct. 22, 1920, No. 240.

PROTECTION OF INDUSTRIAL PROPERTY, Convention for Re-establishment of. Berne, June 30, 1920.

Signatures:

Germany, France, Netherlands, Poland, Portugal, Sweden, Switzerland, Czechoslovakia, Tunis. June 30, 1920. *L. N. T. S.*, Sept., 1920, p. 59; *Ga. de Madrid*, Nov. 20, 1920, p. 784.

SANITARY CONVENTION. Paris, Jan. 17, 1912.

Ratification:

United States, Belgium, Denmark, Ecuador, Spain, France, Great Britain, Italy, Norway, Panama, Netherlands, Persia, Portugal, Sweden, Switzerland and Egypt. Oct. 7, 1920. *J. O.*, Oct. 21, 1920, pp. 16138-16151; *Ga. de Madrid*, Nov. 13, 1920, p. 687.

SUGAR BOUNTIES REGULATION. Brussels, Mar. 5, 1902.

Abrogation:

Sept. 1, 1920 [following denunciations by countries concerned]. *Monit.*, Sept. 6/7, 1920, p. 6647.

Denunciation:

Netherlands, Oct. 9, 1919. *L. N. T. S.*, Sept., 1920, p. 73.

TELEGRAPH. St. Petersburg, July 22, 1875. Supplement, Lisbon, June 11, 1908.

Adhesion:

Government of Saar Basin Territory, Oct. 9, 1920. *D. G.*, Oct. 12, 1920, ser. 1, p. 1312.

TRADE-MARKS CONVENTION. Buenos Aires, Aug. 20, 1910.

Denunciation:

Guatemala, Mar. 18, 1920. *P. A. U.*, Nov., 1920, p. 541.

TRADE-MARKS REGISTRATION. Madrid, April 14, 1891. Supplement, Brussels, Dec. 14, 1900. Revision, Washington, June 2, 1911.

Adhesion:

Rumania, Sept. 6, 1920. *Monit.*, Oct. 2, 1920, p. 7882.

UNIVERSAL POSTAL CONVENTION. Madrid, Nov. 30, 1920.

Signed:

Nov. 30, 1920. *Times*, Dec. 1, 1920, p. 11.

M. ALICE MATTHEWS.

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GREAT BRITAIN ¹

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Native Labor. Despatch to the Governor of the East Africa Protectorate relating to, and papers connected therewith. (Cmd. 873.) 5½d.

Patents for Inventions. The Patents (Treaty of Peace) Rules, July 24, 1920. (S. R. & O., 1920, 1371.) 3d.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, London, W. C. 2.

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² Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

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GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

AWARDS IN THE MATTER OF THE "CONTESTED PROPERTY IN PORTUGAL."

*By the Arbitral Tribunal at The Hague*¹

FRENCH CLAIMS

Award rendered September 2, 1920

Whereas, by a *compromis* concluded at Lisbon on July 31, 1913,² the Government of His Britannic Majesty, the Government of His Majesty the King of Spain and the Government of the French Republic, on the one hand, and the Government of the Portuguese Republic, on the other hand, respectively signatories of The Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, have agreed to submit to a Tribunal of Arbitration, constituted in accordance with the summary procedure provided for in Chapter IV of the said convention, the claims relative to the property of British, Spanish and French nationals seized (*arrolados*) by the Government of the Portuguese Republic as a result of the proclamation of the Republic;

Whereas, according to the terms of the said *compromis*, the Arbitral Tribunal has been composed of:

The Honorable Elihu Root, former Secretary of State, former Secretary of War, Senator from the State of New York, member of the Permanent Court of Arbitration;

His Excellency Jonkheer A. F. de Savornin Lohman, Doctor of Law, Minister of State, former Minister of the Interior, member of the Second Chamber of the States-General, member of the Permanent Court of Arbitration;

His Excellency Monsieur Charles Edouard Lardy, Doctor of Law, Envoy Extraordinary and Minister Plenipotentiary of Switzerland at Paris, member of the Permanent Court of Arbitration;

Whereas, the Government of the French Republic has designated as agent and counsel:

M. Henri Fromageot, Doctor of Law, Jurist of the Ministry of Foreign Affairs, Agent;

M. Amé-Leroy, Secretary of the Agent of the French Government.

The Government of the Portuguese Republic:

Judge Vincente Luis Gomes, Doctor of Law, Agent;

Judge Affonso de Mello Pinto Velloso, and

¹ Translated from the official French text published by the *Bureau International de la Cour Permanente d'Arbitrage*.

² Printed in SUPPLEMENT to this JOURNAL, Vol. 8 (1914), p. 165.

M. Jean Prosper-Lévy, honorary counsellor at the Legation of Portugal in France, Deputy Agents;

Whereas, by letters exchanged between the ministers of Great Britain, Spain and France at Lisbon, and the Government of the Portuguese Republic, on November 21, 1913, January 26, 1914, October 19, 1914, September 30–October 7, 1919, January 17–26, 1920, the periods respectively provided by the said *compromis* for the deposit of the cases, counter-cases, and replies have been successively prolonged;

Whereas, in accordance with the understanding reached at Lisbon, on August 13, 1920, and duly notified to the Secretariat of the Tribunal, the British, French and Portuguese Governments have agreed that "the Tribunal shall have complete freedom in settling, according to equity and by a single judgment or several judgments, the claims which form the subject of the arbitration;"

Whereas, on July 31, 1914, the Agent of the Government of the French Republic has regularly deposited in the Secretariat of the Tribunal the cases and documents relative to the claims, as far as French nationals are concerned, of: François-Xavier Schürer, Louis-Felix Girollet, Augustin-Marie La Brousse, François-Joseph Salvan, Désiré-Théophile Caullet, Emile-Jules-César Sénicourt, Hélène-Marceline-Marie de Geslin de Bourgogne, Anne-Madeleine-Augustine Dufour, Rosalie-Joséphine Billaut, Marie-Louise-Anna Théroine, Ernestine Savary, Louise-Marie Rober et Besson, Claudine Perret et Poyet, Marie Vaslet et Banatre, Delphine-Laure Jallon et Guillon and Marie-Louise Dault et Cocheril, Marie Durand, Marie Barat, Sophie Trabaud, Marie-Louise Dévenas (and jointly with them D. Salvadora Espinosa de los Monteros, Spanish subject, and Alice Wilman, British subject), Denise Alis and Marie Solomiac, Marie Ménard and Marie-Joséphine Dupé;

Whereas, on September 25, 1919, the Agent of the Government of the Portuguese Republic has regularly deposited in the Secretariat of the Tribunal the counter-cases and documents relative to the said claims;

Whereas, since the examination was closed, the Tribunal, constituted as stated above, met at The Hague in the Palace of the Permanent Court of Arbitration, on September 2, 1920;

In form:

Whereas, since the claims submitted to the Tribunal have for their origin the same facts, it is in order to decide with regard to them by one and the same judgment.

In fact:

In view of the circumstances under which the claimants possessed the property claimed in Portugal, as well as the burdens resulting therefrom, and especially the fact that they had introduced capital into that country;

Whereas, it was not the intention of the Government of the Portuguese Republic to seek in the seizure of the said property a source of pecuniary gain, any more than it had been the intention of the claimants to violate the respect due to the laws and institutions of Portugal;

Whereas, under these circumstances, the following settlement of the claims, the subject of the present arbitration, appears as just and equitable and of

a nature to satisfy the respective legitimate expectations of the parties; all claims, whatsoever may be their object, either of the claimants or of the Portuguese Government, relative to the claimed property, being declared definitely settled and in future extinguished;

Whereas, with regard to Marie Ménard, the French nationality of the said person is not established and consequently the claim presented in her name by the French Government is not admissible;

For these reasons, the Arbitral Tribunal declares and pronounces as follows:

1. The Government of the Portuguese Republic will retain as proprietor the property seized by it as a result of the decree of October 8, 1910, to wit: the establishment of the College Sainte-Marie at Porto; the College of the Holy Ghost at Braga; the Agricultural and Colonial School of Cintra, with their appurtenances, furnishings and fittings, respectively claimed by Messrs. François-Xavier Schürer, Louis-Felix Girollet, Augustin-Marie La Brousse and Joseph-François Salvan; two parcels of land situate on the road Das Amoreiras and on the road Das Amoreiras and Da Circumvallação at the place Do Leao at Lisbon; the school and hospital Rego at Lisbon; the convent of San Domingo at Bemfica; the College of Marvilla near Lisbon; various parcels of land and houses situate on the mountain of Santa Quiteria, division of Felgueiras, district of Porto, with their appurtenances, furnishings and fittings, respectively claimed by Messrs. Désiré-Théophile Caultet and Emile-Jules César Sénincourt; two parcels of real estate situate, one at Lisbon, Rua do Patrocinio Nos. 1, 3, 5, and the other at Braga, Rua dos Congregados, with their appurtenances, furnishings and fittings, claimed by Hélène-Marceline-Marie de Geslin de Bourgogne; a parcel of real estate situate at Lisbon, Escadinhas de San Chrispim, Nos. 5, 7 and 9; a parcel of real estate situate at Lisbon, Costa do Dastello, Nos. 1 to 15, and a parcel of real estate constituting the College of Notre Dame of Monserrate, at Vianna do Castello, with their appurtenances, furnishings and fittings, respectively claimed by Anne-Madeleine-Augustine Dufour, Rosalie-Joséphine Billaut and Anne Théroine; half of the parcels of real estate situate at Funchal, Rua das Hortas and "Beco" das Hortas; a parcel of real estate situate at Campolide de Cima, parish of Saint-Sébastien de Pedreira of Lisbon; two parcels of real estate situate at Covilha, called "Casa Nova" and "Lage da Mó," with their appurtenances, furnishings and fittings, respectively claimed by Ernestine Savary, Louise-Marie Rober et Besson, Claudine Perret et Poyet, Marie Vaslet et Baratre, Delphine-Laure Jallon et Guillon, Marie-Louise Dault et Cocheril, Marie Durand, Marie Barat, Sophie Trabaud, Marie-Louise Dévenas, Salvadora Espinosa de los Monteros and Alice Wilman; a parcel of real estate situate at Campo Maior, Rua da Carreira, known under the name of the Palace; a parcel of real estate situate in the same town, Rua da Mouraria de Baixo, No. 1; and a parcel of real estate situate at Lisbon, Rue des Picoas, No. 13, comprising a house, a chapel, and a park, with its appurtenances, furnishings and fittings, respectively claimed by Denise Alis and Marie Solomiac, but with reservation of what is stated below with regard to the chapel, its fittings, furnishings and objects devoted to worship;

2. The Government of the Portuguese Republic will deposit with the Lega-

tion of France at Lisbon, within a period of thirty days from the date of the present arbitral decision, the net lump sum of 328 contos, 867 escudos and 50 centavos, in full settlement and free of any charges whatsoever, to be paid to the aforementioned claimants; at the expiration of the said period, the said sum will bear interest at the rate of 6 per cent. per annum, the legal rate of interest in Portugal.

3. The Portuguese Government will take upon itself the payment of the debts existing in Portugal on October 8, 1910, against Messrs. Schürer, Girollet, La Brousse and Salvan, claimants mentioned above, as well as the payment of the debts encumbering the parcels of real estate claimed by Hélène-Marceline-Marie de Geslin de Bourgogne, a claimant likewise mentioned above.

4. The chapel of Picoas, composed according to the plan hereto annexed of a ground-floor and a second floor, together with the furnishings and the sacred vessels, in general all the objects and ornaments for the practice of worship, will be left to Denise Alis and Marie Solomiac, to be placed at the disposal of the Nuncio at Lisbon.

5. The parcel of real estate situate Rue de San Diniz, 605 Freguezia de Paranhos at Porto, claimed by Marie-Joséphine Dupé, used as an institution of education for young girls, shall continue to be put to this use. In case the said use shall terminate, the parcel of real estate shall return to the Portuguese Government, which shall be bound to pay to the Legation of France at Lisbon, within thirty days after the termination, an indemnity of 8 contos for the benefit of the said Marie-Joséphine Dupé.

6. The claim of Marie Ménard is rejected as being inadmissible.

7. All other motions of the parties are rejected and all further claims, whatsoever may be their object, either of the aforementioned claimants or of the Portuguese Government, relative to the claimed property, the subject of the present arbitration, are declared definitively settled and in future extinguished.

Done at The Hague, in the Palace of the Permanent Court of Arbitration, on September 2, 1920.

The President: ELIHU ROOT,

The Secretary-General: MICHIELS VAN VERDUYNEN,

The Secretary: CROMMELIN.

BRITISH CLAIMS

Award rendered September 2, 1920

Whereas, by a *compromis* concluded at Lisbon, on July 31, 1913, the Government of His Britannic Majesty, the Government of His Majesty the King of Spain, and the Government of the French Republic, on the one hand, and the Government of the Portuguese Republic, on the other hand, respectively signatories of The Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, have agreed to submit to a Tribunal of Arbitration, constituted in accordance with the summary procedure provided for

in Chapter IV of the said convention, the claims relative to the property of British, Spanish and French nationals seized (*arrolados*) by the Government of the Portuguese Republic as a result of the proclamation of the Republic;

Whereas, according to the terms of the said *compromis*, the Arbitral Tribunal has been composed of:

The Honorable Elihu Root, former Secretary of State, former Secretary of War, Senator from the State of New York, member of the Permanent Court of Arbitration;

His Excellency Jonkheer A. F. de Savornin Lohman, Doctor of Law, Minister of State, former Minister of the Interior, member of the Second Chamber of the States-General, member of the Permanent Court of Arbitration;

His Excellency Monsieur Charles Edouard Lardy, Doctor of Law, Envoy Extraordinary and Minister Plenipotentiary of Switzerland at Paris, member of the Permanent Court of Arbitration;

Whereas, the Government of His Britannic Majesty has designated as Agent and Counsel: M.H.W. Malkin, Deputy Jurisconsult in the Ministry of Foreign Affairs;

The Government of the Portuguese Republic:

Judge Vicente Luis Gomes, Doctor of Law, Agent; Judge Affonso de Mello Pinto Velloso, and M. Jean Prosper-Lévy, honorary counsellor at the Legation of Portugal in France, Deputy Agents;

Whereas, by letters exchanged between the ministers of Great Britain, Spain and France at Lisbon, and the Government of the Portuguese Republic, on November 21, 1913, January 26, 1914, October 19, 1914, September 30–October 7, 1919, January 17–26, 1920, the periods respectively provided by the said *compromis* for the deposit of the cases, counter-cases, and replies have been successively prolonged;

Whereas, in accordance with the understanding reached at Lisbon on August 13, 1920, and duly notified to the Secretariat of the Tribunal, the British, French and Portuguese Governments have agreed that "the Tribunal shall have complete freedom in settling, according to equity and by a single judgment or several judgments, the claims which form the subject of the arbitration";

Whereas, on February 21, 1914, the Agent of the Government of His Britannic Majesty has regularly deposited in the Secretariat of the Tribunal the cases and documents relative to the claims, as far as British nationals are concerned, of: Joseph Bramley, Jeanne Butler and Françoise Moylan, Jeanne Butler and Cécile Kenny, Marie Hughes, Marie Maynard, Marie Anne MacMullen and Rose Anne MacMullen, Elizabeth Tipping;

Whereas, on September 25, 1919, the Agent of the Government of the Portuguese Republic has regularly deposited in the Secretariat of the Tribunal the counter-cases and documents relative to the said claims;

Whereas, since the examination was closed, the Tribunal, constituted as stated above, met at The Hague in the Palace of the Permanent Court of Arbitration, on September 2, 1920;

In form:

Whereas, since the claims submitted to the Tribunal have for their origin

the same facts, it is in order to decide with regard to them by one and the same judgment.

In fact:

In view of the circumstances under which the claimants possessed the property claimed in Portugal, as well as the burdens resulting therefrom, and especially the fact that they had introduced capital into that country;

Whereas, it was not the intention of the Government of the Portuguese Republic to seek in the seizure of the said property a source of pecuniary gain, any more than it had been the intention of the claimants to violate the respect due to the laws and institutions of Portugal;

Whereas, under these circumstances, the following settlement of the claims, the subject of the present arbitration, appears as just and equitable and of a nature to satisfy the respective legitimate expectations of the parties; all claims, whatsoever may be their object, either of the claimants or of the Portuguese Government, relative to the claimed property, being declared definitely settled and in future extinguished;

Whereas, the British Government declares that it abandons absolutely and without reservation the claims presented by it in the name of Joseph Bramley; whereas under these conditions these claims should be discarded;

For these reasons, the Arbitral Tribunal declares and pronounces as follows:

1. The Government of the Portuguese Republic will retain as proprietor the property seized by it as a result of the decree of October 8, 1910, to wit:

The urban property situate at Campo de Dom Luiz Primeiro, No. 32, parish of São João at Braga, with its appurtenances, furnishings and fittings, claimed by Jeanne Butler and Françoise Moylan; the rural and urban property situate at Rue do Tenente Valadim and Serpa Pinto at Vizeu, with its appurtenances, furnishings and fittings, claimed by Jeanne Butler and Cécile Kenny; the property situate at Place du Coronel Pacheco at Porto, with its appurtenances, furnishings and fittings, claimed by Marie Hughes, Marie Maynard, Rose Anne MacMullen and Marie MacMullen; a lot of land near the College of Jesus, Mary and Joseph, situate 6a Rue de Quelhas at Lisbon, claimed by Elizabeth Tipping.

2. The Government of the Portuguese Republic will deposit with the British Legation at Lisbon, in full settlement, the net lump sum of 91 contos, 747 escudos, payable in money within thirty days from the date of the present arbitral decision, or within a period of three months in receipts for all the mortgage debts which may encumber the said parcels of real estate up to the amount of the said debts, and the balance in money. In the first case the payment of all the said debts will be to the account of the respective claimants. At the expiration of the said periods, the said sum will bear interest at the rate of 6 per cent. per annum, the legal rate of interest in Portugal.

3. A record is made of the declaration of the British Government that it abandons absolutely and without reservation the claims presented by it in the name of Joseph Bramley; the said claims are in this matter discarded.

All other motions of the parties are rejected, and all further claims, whatsoever may be their object, either of the aforementioned claimants or of the Portuguese Government, relative to the claimed property, the subject of

the present arbitration, are declared definitively settled and in future extinguished.

Done at The Hague in the Palace of the Permanent Court of Arbitration on September 2, 1920.

The President: ELIHU ROOT,

The Secretary-General: MICHIELS VAN VERDUYNEN,

The Secretary: CROMMELIN.

SPANISH CLAIMS.

Awards rendered September 4, 1920.

Whereas, by a *compromis* concluded at Lisbon, on July 31, 1913, the Government of His Britannic Majesty, the Government of His Majesty the King of Spain, and the Government of the French Republic, on the one hand, and the Government of the Portuguese Republic, on the other hand, respectively signatories of The Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, have agreed to submit to a Tribunal of Arbitration, constituted in accordance with the summary procedure provided for in Chapter IV of the said convention, the claims relative to the property of British, Spanish and French nationals seized (*arrolados*) by the Government of the Portuguese Republic as a result of the proclamation of the Republic;

Whereas, according to the terms of the said *compromis*, the Arbitral Tribunal has been composed of:

The Honorable Elihu Root, former Secretary of State, former Secretary of War, Senator from the State of New York, member of the Permanent Court of Arbitration;

His Excellency Jonkheer A. F. de Savornin Lohman, Doctor of Law, Minister of State, former Minister of the Interior, member of the Second Chamber of the States-General, member of the Permanent Court of Arbitration;

His Excellency Monsieur Charles Edouard Lardy, Doctor of Law, Envoy Extraordinary and Minister Plenipotentiary of Switzerland at Paris, member of the Permanent Court of Arbitration;

Whereas, the Government of His Majesty the King of Spain has designated as Agent:

M. Cristobal Botella, Advocate, Counsel of the Embassy of His Majesty the King of Spain, Agent;

The Government of the Portuguese Republic;

Judge Vicente Luis Gomes, Doctor of Law, Agent;

Judge Affonso de Mello Pinto Velloso, former Minister of Justice, and

M. Jean Prosper-Lévy, honorary counsellor at the Legation of Portugal in France, Deputy Agents;

Whereas, by letters exchanged between the ministers of Great Britain, Spain and France at Lisbon, and the Government of the Portuguese Republic, on November 21, 1913, January 26, 1914, October 19, 1914, September 30–October 7, 1919, January 17–26, 1920, the periods respectively provided by the said *compromis* for the deposit of the cases, counter-cases, and replies have been successively prolonged;

Whereas, on February 21, 1914, the Agent of the Government of His Majesty the King of Spain has regularly deposited in the Secretariat of the Tribunal the cases and documents relative to the claims, as far as Spanish nationals are concerned, of: Baldomero Aldaz y Lopez, José Antonio Alvarez y Tabua, Madame Concepcion Barrenechea y Manterola, Baldomero Ciriza and others, Baldomero Ciriza and Andrés Gaspa Moga, Baldomero Ciriza Olangua and Andrés Gaspa Moga, Fructuosa Fernandez de Gamboa, Ignacio Rodriguez Insua and Andrés Santiago, Maximino Llaneza, Pedro Gomez Nunez, Francisco Perez, Eduardo Fernandez Pesquero, Madame Tomasa Rocatallada y Escartin, Antonio Rodriguez Sobrino, Madame Magdalena Rodriguez y Laplana, Robustiano Rodriguez y Sobrino, Leocadio Ruiz and Crescencio Marquez and Luis Uzarraga;

Whereas, on September 25, 1919, the Agent of the Government of the Portuguese Republic has regularly deposited in the Secretariat of the Tribunal the counter-cases and documents relative to the said claims;

Whereas, on August 6, 1920, the Agent of the Government of His Majesty the King of Spain has regularly deposited in the Secretariat of the Tribunal a reply relative to the said claims;

Whereas, since the examination was closed, the Tribunal, constituted as stated above, met at The Hague in the Palace of the Permanent Court of Arbitration on September 4, 1920;

Whereas, according to the tenor of Article IV of the *compromis*, the Tribunal must examine successively each of the claims, and whereas, each of them must be the subject of a separate award;

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Baldomero Aldaz y Lopez and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government claims in favor of Baldomero Aldaz y Lopez a house called "O Collegio," with a chapel open to the public and with other appurtenances described in its case, as well as another house called "Da Amalia," all situate on Rue de S. Brás, town of Aldeia da Ponte, commune of Sabugal, district of Guarda, and purchased by the claimant for the sum of 3,500 escudos (or about frs. 17,500), on January 8, 1898, from Father Angelo Hercules Mani Efigeni, an Italian subject, represented by Father Lourenco Gonçaos;

Upon the aforementioned real estate there was installed the religious association of the Collegio d'Aldeia da Ponte, of which the claimant was a member, and which had been authorized by decree of October 18, 1901;

The said association was dissolved by royal decree of September 12, 1910, and several days later the Portuguese Government placed itself in possession of the claimed parcels of real estate;

Whereas, the Portuguese Government in the first place makes the objection that the claimant alleges that he is a Spaniard, but does not furnish the proof

of his nationality, so that this claim does not come under the jurisdiction of the Tribunal;

Whereas, in fact, the claimant has not furnished any proof to confirm in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that he belongs to one of the aforementioned nationalities;

For these reasons, the Tribunal declares the claim of the Spanish Government in favor of M. Baldomero Aldaz y Lopez to be inadmissible.

Done at The Hague in the Palace of the Permanent Court of Arbitration on September 4, 1920.

The President: ELIHU ROOT,

The Secretary-General: MICHIELS VAN VERDUYNEN,

The Secretary: CROMMELIN.

[As stated in the preceding award, a separate award, as required by the *compromis*, was rendered in each Spanish case. In each of the cases following, the date of the award, the recitals preceding the award, and the signatures are identical with the foregoing award, and are therefore omitted as unnecessary repetition.—EDITOR.]

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Father José Antonio Alvarez y Tabua and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The claimant has acquired, in common with Charles Zimmermann, a German subject, on March 12, 1908, two pieces of property situate at Castello Branco (Portugal), more fully described in the case; whereas, on October 8, 1910, the claimant was by force deprived of his property, the restitution of which he claims, as well as the payment as compensation for damages in the sum of frs. 120,000, representing indemnification for the improvements upon these parcels of property, the cessation of the profits which they bore, as also the value of the furnishings and library situated upon them; whereas, this property was gratuitously loaned to the Association "Foi et Patrie," officially approved by decree of April 18, 1901, and proprietor of the college of S. Fiel where the claimant was a professor;

Whereas, the German Zimmermann does not present any claim and his Government does not do so either;

Whereas, the Portuguese Government, while inferring the inadmissibility of the claim in reality, makes the objection that the claimant does not furnish the proof of his nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, the claimant alleges that he is a Spaniard, but has not in fact established his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*,

to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but, whereas, the claimant does not prove in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code that he belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of Father José Antonio Alvarez y Tabua to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Dona Concepcion Barrenechea y Manterola and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government claims in favor of Dona Concepcion Barrenechea y Manterola:

1. The restitution of two parcels of property, both situate in the street São Salvador, parish of the same name, city of Torres Novas, more fully described in the case of the claimant, the right to these parcels resulting from the deed of donation made to her by the Doctor François Maria Rodrigues d'Oliveira Grainha, priest and physician, according to the authentic document of December 5, 1893, which donation is registered in the land-register under date of February 17, 1894, the said parcels appraised at 12,000 \$ 40 escudos, or about frs. 60,000;

2. The restitution of the personal property which furnished the said property at the moment of the dispossession, appraised at 2,000 escudos, or about frs. 10,000, or their value;

Whereas, the claimant has rented her property to an association called "Association of Saint Theresa of Jesus" of which she did not form and does not form a part; whereas, this association had there continued the institution of instruction known under the name of the College of Jesus, Mary and Joseph up to the time of the proclamation of the Portuguese Republic, when the Portuguese Government seized the said real estate and personal property; whereas, the claimant desires to be indemnified for the letting of her property since that period, at the rate of 600 escudos, or about frs. 3,000, per annum;

Whereas, the claimant alleges that she is a Spaniard, as having been born of Spanish parents at Metrico, province of Guipuzcoa (Spain);

Whereas, the Portuguese Government makes the objection that the claimant does not furnish proof of her nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but, whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that she belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of Dona Concepcion Barrenechea y Manterola to be inadmissible.

THE TRIBUNAL,

IN view of the claim presented by the Spanish Government in favor of Dona Concepcion Barrenechea y Manterola and the papers in support thereof;

IN view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government claims in favor of Dona Concepcion Barrenechea y Manterola:

1. The bare ownership of a parcel of land situate at the place called Merouço, parish of Sta. Cristina do Couto, judiciary precinct of Sto. Thyrso, more fully described in the case of the claimant, the right to this parcel resulting from a deed of gift made in favor of the claimant by José Vicente Correla d'Abreu, according to the authentic document of February 10, 1897, a donation made with the reservation of usufruct, but transferring from the date of purchase to the donee the entire ownership and possession of the said property "in order that she may take personal or legal possession thereof as and when she may see fit," the said property designated in Book B 64, folio 36, of the record office of the land register of the said precinct as No. 2269 and appraised at the sum of 15,000 escudos, or about frs. 75,000;

2. The ownership, without any limitation, of the personal property which furnished the said property, mentioned in the inventory annexed to the case and estimated at the sum of 3,000 escudos, or about frs. 15,000;

Whereas, she was dispossessed of her right to the aforementioned real estate and personal property by the Portuguese Government as a result of the revolution of October 3-5, 1910;

Whereas, she had installed upon the said property a boarding school for young girls and had purchased all the furnishings for the said establishment; whereas, she entrusted the administration of the college to the religious association of Saint Theresa of Jesus, of which she was not a member, an association which had already existed for nine years at the time of the seizure of the claimed property by the Portuguese Government, and which had been legally established, the Portuguese state having approved of its statutes by decree of October 18, 1901;

Whereas, the claimant is a Spaniard, born at Metrico, province of Guipuzcoa, according to a certificate of baptism of the priest of the parochial church of Saint Mary of the Assumption, of the city of Metrico, province of Guipuzcoa, bishopric of Vitoria;

Whereas, the Portuguese Government in the first place makes the objection that the claimant does not furnish any of the documents required in Articles 325e, 326e and 327e of the Spanish Civil Code, and 2411 of the Portuguese Civil Code, in order to prove her Spanish nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not made any statement;

Whereas, in fact, the claimant has not furnished any of the documents required by the aforementioned articles of the Civil Codes of Spain and Portugal, in order to establish her nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove in the manner prescribed, either by the Spanish Civil Code or by the Portuguese Civil Code, that she belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of Dona Concepcion Barrenechea y Manterola to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Baldomero Ciriza and others and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Government of His Catholic Majesty claims, in favor of Baldomero Ciriza, the restitution of a certain number of pieces of personal property, or their value, estimated at 6 contos, 22 milreis;

Whereas, the claimant, in support of his request, indicates that with several other Spaniards he occupied at Aldeia da Ponte, municipality of Sabugal, district of Guarda, the property known under the name of "college"; whereas they were owners of the personal property of which the Government of the Portuguese Monarchy had put itself into possession as a result of the royal decree of September 12, 1910, pronouncing the dissolution of the Association of the College of Aldeia da Ponte, an association officially approved in 1901 and to which, moreover, this property was obligingly loaned;

Whereas, the Portuguese Government claims that the claimant does not in any manner prove his Spanish nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not furnished any statement;

Whereas, in fact the claimant has not produced any proof of his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code that he belongs to one of the aforementioned nationalities;

For these reasons, the Tribunal declares the claim of the Spanish Government in favor of Baldomero Ciriza and others to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of D. Baldomero Ciriza and D. Andrès Gaspa Moga and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government claims in favor of Don Baldomero Ciriza Olangua and Don Andrès Gaspa Moga:

1. The restitution of 393 parcels of land situate in the parishes of Calvelhe, Macedo, Mate and Izeda, in the district of Braganza, more fully described in their memoir and its annex, No. 1, of a value reduced to 31 contos, 634,000 reis, as well as of some constructions erected upon these lands and estimated at 6 contos or their value, to be fixed according to expert valuation;

2. The amount required for works necessary to repair the damages sustained by the said lands since October, 1910;

3. The value of the lease of half of the said property since October, 1910, and the letting of the other half since the day of the death of the preceding co-proprietor, in February, 1911, until the day of the execution of the award to be decreed, as well as the value of the agricultural products which were ready to be harvested at the time of the expulsion of the claimants, a value which could not be less than 2 contos of reis;

4. Interest at the rate of 5 per cent. on the said sums, calculated from a period of three months after the rendering of the award;

Whereas, these demands are based upon a document of March 2, 1907, executed before a notary, according to which Maria Rosa and Clara Joanna Martins donated to the claimants the aforementioned property, under the reservation of usufruct; whereas, after the death of one of the donors, a division was made between the surviving donor, Clara Joanna Martins, and the donees, in order to separate the property over which the usufruct of the said Clara Joanna continued, from the property over which the ownership, with entire possession, of the donees began, which division was undertaken by means of a document drawn up before a notary on March 6, 1910;

Whereas, the other donor died in 1911, and thus the usufruct to which she was entitled ceased, so that the donees have full ownership;

Whereas, all these transfers have been duly registered;

Whereas, a few days after the proclamation of the Republic, the Portuguese Government took possession of this property;

Whereas, the Portuguese Government makes the objection in the first place that the claimants do not furnish the proof of their nationality, and whereas, consequently, this claim does not come under the jurisdiction of the Tribunal:

Whereas, the claimant alleges that he is a Spaniard, but does not, however, produce the proof of his nationality, under the conditions prescribed by the Civil Codes of Spain and Portugal;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, and not upon claims relative to the property of other nationals;

For these reasons, the Tribunal declares the claim of the Spanish Government in favor of MM. Ciriza and Gaspa Moga to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Baldomero Ciriza Olangua and Andrès Gaspa Moga and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government claims in favor of Baldomero Ciriza Olangua and Andrès Gaspa Moga:

1. A parcel of property called "Convent of Fraga," situate in the parish of Ferreira d'Aves, canton of Sátão, estimated at 5,000 escudos;

2. The amount required for works necessary to repair the damages sustained by the said parcel of property since October 5, 1910, at the rate of 100 escudos per annum;

3. Its lease value from October 5, 1910, to the date of the award which is to be rendered, at the rate of 100 escudos per annum;

4. Interest at the rate of 5 per cent. upon the said sums, calculated from a period of three months after the rendering of the said award;

Whereas, the claimants allege, in support of their demand, that they are proprietors of this parcel of land, having purchased it in common on April 8, 1907, and having had the acquisition inscribed in the land-register and having paid the taxes;

Whereas, there was installed upon this parcel of land a college belonging to a religious association, the "Association of the College of Aldeia da Ponte," of which M. Olangua was a member;

Whereas, they state that they have in no manner made a gift or a transfer of all or part of this property to the said religious association, but whereas, even in case these gifts or transfers, either directly or through intermediate persons, should be approved (and these gifts or transfers would be contrary to Article 6 of the statutes of the association and would, consequently, bring about the loss of the property for the benefit of the State), this same article would permit them to request its return according to the terms of law;

Whereas, the Portuguese Government makes the objection in the first place that the claimants do not furnish proof of their nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, in fact, the claimants do not furnish the proof of their nationality under the conditions provided by the Civil Codes of Spain and Portugal;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, and not upon claims relative to the property of nationals of other nations;

For these reasons, the Tribunal declares the claim of the Spanish Government in favor of MM. Baldomero Ciriza Olangua and Andrès Gaspa Moga to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Father Fructuoso Fernandez de Gamboa and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal;

The Spanish Government claims for its national, Father Fructuoso Fernandez de Gamboa, the restitution of the objects mentioned in the inventory appended to its claim, objects which were located in the College of Barro near Torres Vedras, department of Lisbon, which the Portuguese Government seized together with everything contained therein;

Whereas, the Portuguese Government, while rejecting the request, makes objection in a preliminary way that this claim does not come under the jurisdiction of the Tribunal because the claimant does not prove his nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, the claimant alleges that he is a Spaniard but he has not in fact established his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that he belongs to one of the aforementioned nationalities;

For these reasons, the arbitral Tribunal declares the claim of the Spanish Government in favor of Father Fructuoso Fernandez de Gamboa to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of MM. Ignacio Rodriguez Insua and Andrès Santiago and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government claims in favor of Ignacio Rodriguez Insua and Andrès Santiago, Spanish citizens, co-proprietors of two parcels of property, one of them situate in the town of Monte, parish of Lourosa, commune of Fera, department of Aveiro, the other designated by the name of Bouça de S. Braz

in the town of Farilhe, parish of Canidello, commune of Villa do Conde, district of Porto: (1) the restitution of the said parcels of land, estimated at the sum of 2,000 escudos for the first, 3,000 escudos for the second of the said parcels, or their value; (2) the restitution of the personal objects which were upon these parcels of property, or their value, estimated at 1,500 escudos; which parcels of land and personal property were seized by the Portuguese Government after the revolution of October 3-5, 1910:

Whereas, the Spanish Government claims, moreover, the amount, estimated at the time of the restitution, necessary for repairing the depreciation and damages suffered by the parcels of land and personal property since their seizure, and amends for the losses suffered as a result of the aforementioned dispossession, at the rate of 100 escudos per annum for the first parcel of land, and at the rate of 150 escudos per annum for the second parcel, or a total of 250 escudos per annum;

Whereas, the claimants base their right of ownership upon titles fully described in the case;

Whereas, the Portuguese Government makes the objection in the first place that the claimants do not present documents proving their nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, the claimants allege that they are Spaniards but have not in fact furnished proof of their nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimants do not prove in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that they belong to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of MM. Ignacio Rodriguez Insua and Andr s Santiago to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of H. Maximino Llana and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The claimant alleges that several revolutionaries did, during the first days of the revolution of October, 1910, in Portugal, seize his servant, who was bearing a bag containing documents or manuscripts indicated in the inventory annexed to the case, and that they gave the bag to the civil government (prefecture) which has guarded it;

Whereas, the Portuguese Government denies that the facts occurred in the manner indicated by the claimant; whereas, moreover, the Portuguese Government has undertaken to have the documents in question searched for and has found them; whereas, the Portuguese Government has informed the claimant

that the manuscripts have been found and that they would be returned to him at Lisbon;

Whereas, the Portuguese Government has produced before the Tribunal a copy of a declaration of the claimant stating that he has received all the manuscripts enumerated in the request presented by the Government of His Majesty the King of Spain before this Tribunal, and that he renounces his claim;

For these reasons, the Arbitral Tribunal rejects the claim as having become groundless.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of M. Pedro Gomez Nuñez and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government claims for its national, Pedro Gomez Nuñez, the restitution of the objects mentioned in the inventory appended to its claim, objects which were located in the house wherein he dwelled, and also the restitution of everything which furnished the chapel, and finally the restitution of the cattle which was upon the farm near the house occupied by him at Izedá, commune and department of Bragança, where he dwelled with several companions at the time of the revolution of October 3-5, 1910;

Whereas, the Portuguese Government makes the objection in the first place that this claim does not come under the jurisdiction of the Tribunal, because the aforementioned claimant does not in any manner prove his nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, in fact the claimant does not produce any evidence of his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code that he belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of M. Pedro Gomez Nuñez to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Father Francisco Perez and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal;

The Spanish Government claims for its national, Father Francisco Perez, the

value of 2,317 pesetas, since the Portuguese Government seized after the revolution in Portugal on October 3-5, 1910, the parcel of land known under the name of Convent of Fraga at Farreira do Aves, commune of Sattam, department of Viseu, where the claimant dwelled with several companions, and seized all the property which was located there and which is designated in the appended inventory, the inventory containing the indication of the value of the said property;

Whereas, the Portuguese Government makes the objection in the first place that the claimant does not furnish proof of his nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, in fact, the claimant, who alleges that he is a Spaniard, has not furnished any proof of his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that he belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of Father Francisco Perez to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of M. Eduardo Fernandez Pesquero and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Government of His Catholic Majesty claims in favor of Eduardo Fernandez Pesquero the restitution of certain personal property belonging to him, or in default thereof, its value, estimated at 448 pesetas; whereas, the claimant alleges, in support of his request, that he dwelled in the College of Barro; whereas, at the time of the revolution he was driven out of the said college with great violence and taken away as a prisoner; whereas, the Portuguese Government has seized the said college with everything located therein;

Whereas, the Portuguese Government makes the objection in the first place that the claimant does not furnish the proof of his nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, in fact, the claimant, who alleges that he is a Spaniard, does not furnish any proof of his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but, whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that he belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of M. Eduardo Fernandez Pesquero to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Dona Tomasa Rocatallada y Escartin and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The claimant had resided for several years at Lisbon at the time of the revolution of October 3-5, 1910, upon a parcel of land belonging to a Spanish lady and to other Portuguese ladies, a parcel of land upon which there was installed the religious association called "Associação do Santissimo Coração de Jesus" of which she was a member and which was authorized in Portugal by decree of October 18, 1901;

Whereas, many personal objects, indicated in the inventory annexed to the case of the claimant and estimated in this inventory to have a value of 25,361 escudos 90, or frs. 121,805, were located upon this parcel of land;

Whereas, the Government of the Portuguese Republic seized at the time of the revolution of October 3-5, 1910, the aforementioned parcel of land with the objects located thereon;

Whereas, the claimant declares that these objects belong to her and should be restored to her;

Whereas, the Portuguese Government makes the statement that the claimant has not proved her nationality because she has not furnished her birth certificate, but that it consents not to avail itself of this plea because the claimant has produced a certificate of the consulate of Spain considered as sufficient;

Whereas, since the parties do not contest the nationality of the claimant, the Tribunal is justified in considering her as a Spaniard;

Whereas, on the other hand, the claimant does not prove in any way that the objects claimed belong to her; whereas, the fact alleged by her that the claimed objects and a register in which they were found were located, at the time of the occupation by the Portuguese Government, in the house in which she dwelled, does not prove that these objects were the private property of the claimant, because, according to the case, a religious association had been installed upon the property inhabited by her, an association which necessarily was formed of a number of persons, and because a simple register does not and can not indicate which of the inhabitants of the house is the proprietor of the personal property located therein;

For these reasons, the Arbitral Tribunal decides that the Government of the Portuguese Republic is not bound to restore to the legation of Spain at Lisbon the objects indicated in the inventory annexed to the case, or their value, with a view to their restoration to the claimant.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of M. Antonio Rodriguez Sobrino and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government requests of the Tribunal, in favor of Antonio Rodriguez Sobrino, a Spanish citizen, the restitution of his joiner's tools, as well as articles of clothing and footwear which were located before October 5, 1910, at the home of his compatriots, the Spanish priests of Travessa das Mercês, No. 72, at Lisbon, where he was employed as a joiner; whereas, in default of this restitution, the claimant requests the value of his tools to the amount of 60 escudos, and for his clothes and footwear, the sum of 10 escudos; he finally claims the sum of 328 escudos 50 as compensation due for enforced cessation of work for one year, owing to the loss of his tools, the said indemnity calculated at the rate of escudos O \$ 90 per day, which this workman received for his work;

Whereas, the Portuguese Government makes the objection in the first place that the claimant does not furnish proof of his nationality;

Whereas, the Spanish Government has had knowledge of this exception through the counter-case of the Portuguese Government and has not drawn up any statement;

Whereas, the claimant, who alleges that he is a Spaniard, does not, in fact, furnish any proof of his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that he belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of M. Antonio Rodriguez Sobrino to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Dona Magdalena Rodriguez y Laplana and the papers in support of this claim;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government claims in favor of Dona Magdalena Rodriguez y Laplana, co-proprietor jointly with six Portuguese ladies, of a parcel of property situate at Lisbon, Rua Nova des Olivais, called Quinta de Candieiro, purchased by them at a price of 10,000,000 reis (10,000 escudos, or about frs. 50,000), according to an authentic document drawn up on October 21, 1899, and entered in Book No. 125 of the notary Carlo Augusto Scola at Lisbon, a parcel of property estimated in the memoir at a value of 15,000 escudos or about frs. 75,000;

Whereas, one of these co-proprietors died on March 1, 1909, after having appointed as heirs the six other co-proprietors in such a way that at the present time the six ladies, still living, are co-proprietors of the aforementioned parcel of land;

Whereas, the claimant alleges that she is a subject of His Majesty the King of Spain, and furnishes a certificate issued by the Consul-General of Spain in Portugal, in order to prove her nationality;

Whereas, the Portuguese Government denies that the claimant has established her nationality by the said certificate and claims that the Tribunal is not competent to render judgment in this case; whereas, the Portuguese Government, moreover, declares that since the claimant is a co-proprietor, she is not entitled alone to enter a claim for the complete or partial restitution of the said property; and, finally, whereas, the claimant is only a fictitious proprietor of one-sixth of the property, the religious congregation Associação de Santissimo Caração de Jesu being actually and alone the proprietor of the property;

Whereas, according to Article 327 of the Spanish Civil Code "the minutes of the register of the civil state shall furnish the proof of the civil state, which shall not be replaced by any others unless it does not exist, or unless the books of registry have disappeared, or in case a dispute has been raised before the Tribunal"; whereas, the claimant has not furnished any other proof besides the aforementioned consular certificate, without alleging that she finds herself confronted by one of the exceptional cases of the aforementioned Article 327 of the Spanish Civil Code; whereas, her nationality has, therefore, not been established;

Whereas, the Spanish Government has had knowledge of the exception of incompetence maintained by the Portuguese Government and has not drawn up any statement;

Whereas, the claimant has not furnished the proof of Spanish nationality as it is prescribed by Articles 327 of the Spanish Civil Code and 2441 of the Portuguese Civil Code;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that she belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of Dona Magdalena Rodriguez y Laplana to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of M. Robustiano Rodriguez y Sobrino and the papers in support of this claim;

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government requests the Tribunal, in favor of Robustiano Rodríguez y Sobrino, a Spanish citizen, to cause to be restored to him certain tools and other articles necessary to his profession as painter, which, before October 3, 1910, were located at the home of his compatriots, the Spanish priests of Travessa das Mercês, No. 72, at Lisbon, where he was employed; that in default of this restitution the value of the said objects be paid to him, that is 40 escudos; that, moreover, there be granted to him the sum of 292 escudos as compensation for enforced cessation of work for one year owing to the loss of his tools, the said indemnity calculated at the rate of 0.80 per day, which this workman received for his work, with interest at 5 per cent. upon the sums, computed from a period of three months after the rendering of the decision which is to be pronounced;

Whereas, the Portuguese Government makes the objection in the first place that the claimant does not furnish proof of his nationality;

Whereas, the Spanish Government has had knowledge of this exception through the counter-case of the Portuguese Government and has not drawn up any statement;

Whereas, the claimant, who alleges that he is a Spaniard, does not, in fact, furnish any proof of his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that he belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of M. Robustiano Rodríguez y Sobrino to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of Fathers Leocadio Ruiz and Crescencio Marquez and the papers in support thereof:

In view of the counter-case presented by the Portuguese Government on the subject of the said claim and the papers in support:

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The claimants, alleging that they are Spaniards, chaplains of the Legation of Spain, occupied at the time of the revolution of October 3-5, 1910, the parcel of property at Travessa das Mercês, No. 72, and the adjoining church at Lisbon; whereas, their church and their house were invaded by the crowd and the revolutionary troops, who carried on a veritable pillage therein; whereas, after the revolution the Portuguese Government took possession of the house of the claimants and has not returned to them either their property or the value thereof; whereas, consequently, they claim the restitution of the said personal property or its value, the traveling expenses of the claimants and of two domestic servants attached to them at the time of their expulsion from Portugal, and 1350 pesetas representing the cost of the repairs to be made in the church

and in the house, which they occupied at the time of their expulsion from Portugal;

Whereas, the Portuguese Government makes the objection in the first place that the claimants, who allege that they are Spaniards, do not furnish proof of their nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, the claimants have not, in fact, furnished any proof of their nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimants do not prove, in the manner prescribed by the Spanish Civil Code and the Portuguese Civil Code, that they belong to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of Fathers Leocadio Ruiz and Crescencio Marquez to be inadmissible.

THE TRIBUNAL,

In view of the claim presented by the Spanish Government in favor of M. Luis Uzarraga and the papers in support thereof;

In view of the counter-case presented by the Portuguese Government, on the subject of the said claim and the papers in support;

Whereas, with regard to the facts which have given rise to the difference submitted to the arbitration of the Tribunal:

The Spanish Government requests of the Tribunal in favor of M. Luis Uzarraga, a Spanish citizen:

1. The restitution of certain personal property belonging to him, as well as to his wife, objects which he had deposited at the house of the Spanish priests residing at Travessa das Mercês, No. 72, at Lisbon, where he resided while he was waiting to find work in his profession as an electrician;

2. The allocation of a sum of 130 escudos as compensation for damages due to enforced cessation of work, as well as for the loss of his professional tools;

Whereas, the Portuguese Government makes the objection in the first place that the claimant does not furnish proof of his alleged Spanish nationality;

Whereas, the Spanish Government has had knowledge of this exception through the Portuguese counter-case and has not drawn up any statement;

Whereas, the claimant, who alleges that he is a Spaniard, does not, in fact, furnish any proof of his nationality;

Whereas, the Tribunal is charged, by virtue of Article 1 of the *compromis*, to render judgment upon the claims relative to the property of nationals of Spain, France and Great Britain, but whereas, the claimant does not prove, in the manner prescribed by the Spanish Civil Code, and the Portuguese Civil Code, that he belongs to one of the aforementioned nationalities;

For these reasons, the Arbitral Tribunal declares the claim of the Spanish Government in favor of M. Luis Uzarraga to be inadmissible.

BOOK REVIEWS¹

Collapse and Reconstruction, European Conditions and American Principles.
By Sir Thomas Barelay. Boston: Little, Brown & Co. 1919. pp. ix, 315.

This book is a study of present-day world politics, with special reference to the influences which have proceeded from the United States. The author is one of the most prominent in the little group of lawyers having offices in different countries, who are often spoken of as "international lawyers," and his work is full of important suggestions.

He frankly takes the position that the principles laid down by President Wilson as peace preliminaries, having been accepted as such by all parties to the World War, must be taken as constituting for the time being, at least, the basis of reconstruction (p. vi).

Peace, after a fashion, has been achieved, but he says, its duration is dependent rather upon a simultaneous advance of the reasonableness of mankind than upon any artifices of statesmen and diplomatists. I say *simultaneous*, because just as the slowest ship makes the pace of a fleet, so the most backward nation in the community of nations makes the pace of civilization. But even assuming a relatively high degree of civilization in any one state, the majority may be easily swayed by circumstances, oratory, prejudice, their mental balance disturbed by over-education, the rectitude of their vision vitiated by tradition and the different influences which determine the character of groups of mankind, just as they do that of individuals (p. 2).

In America, he thinks, foreign policy is kept more in harmony with domestic policy, than in Europe. It is more consistently democratic. It keeps the government more closely in touch with the people. Its golden rule, as formulated by President Wilson in stating the reasons for the intervention in the World War by the United States, has been to secure "the reign of law based on the consent of the governed" (p. 18).

Why have not the successive world movements towards peace, with all their backing from America, achieved more? "The failure of the peace movements of a generation of civilized mankind, in fact, is due to concentration of effort on arbitration, and other methods of dealing with incidents of international trouble, and not with causes" (p. 12).

Sir Thomas formulates, himself, certain "generalizations or principles" as seeming to apply to present circumstances. Among them (p. 23), the following may be particularly mentioned:

1. The movable or changeable yields to the immutable; therefore, in a conflict between racial and geographical considerations, the latter necessarily prevail.
2. Natural boundaries are such as offer the minimum of obstacles to their preservation

¹ The JOURNAL assumes no responsibility for statements made or views expressed in signed book reviews.—Ed.

as such; therefore, navigable rivers, being highways of commerce, do not afford the requisites of natural boundaries. . . .

5. A state without free access to the sea is dependent on its neighbors and lacks an element of independence.

6. A state enjoys its right of participation in pacific international intercourse, subject to its observance of its contractual obligations and of the principles of humanity, honor and social and commercial integrity regarded as essential in the conduct of individuals.

7. Evolution of states is subject to the general processes of evolution, and implies adjustment of organisms to environment and a coalescing of apposite tissues. . . .

9. Racial, industrial and political impulses within any state in course of time have always yielded to each other. Compromise is a conscious acceptance of such natural adjustment of tendencies.

10. Preference should therefore be given, *ceteris paribus*, and where it works without violent resistance, to the *status quo*.

National character is also an important cause of international misunderstandings.

In England the average intellect is dull, but honest. School life is based on the development of character and a robust sort of honor which easily takes the external form of arrogance. The reputation abroad of British diplomacy is, however, and therefore, that though arrogant, it is straightforward, well-meaning and trustworthy. In Germany, diplomacy has endeavored to follow the English example, but the basis is different. Early training in that country is occupied with the acquisition of exact knowledge and habits of intellectual accuracy, and the average German has a much more effective culture than the Englishman. The development of character is neglected and boys do not acquire in school that individual sense of honor which distinguishes English training. In many cases they are encouraged to play the part of traitor to each other. . . . From the point of view of general culture, the French diplomatist is superior to both the English and German, and he has the intellectual and social gifts of most Frenchmen which makes him a favorite in every *milieu* into which he tumbles. As a diplomatist he is "to the manor born," and if the pursuit of diplomacy were exclusively one of making friends for one's country, which it largely is, the French diplomatist would be easily first. In dealing with difficulties when they arise, however, French diplomatists are not equal to the cool-headed and obstinate Englishmen or to the accurate, but more or less unscrupulous, diplomatists of Germany. The diplomacy of the United States is based on a different principle from that of England, France or Germany, *viz.*, that of more or less permanency of the staff and subjection of the diplomatic chiefs to the party system (pp. 32-35).

The author thinks that Washington's Farewell Address is the necessary starting point of any study of American foreign policy.

Washington's successors have drawn as much inspiration from it as from the Constitution itself. When the Cuban war brought the annexation of the Philippines, authors and politicians on both sides appealed to it, but never at any time was the morally binding nature of the Farewell Address called into question (p. 64).

Objections are stated at considerable length to the view of the "most favored nation" clause in treaties, taken by the Supreme Court of the United States in *Whitney v. Robertson*, 124 U. S. 190, namely, that the clause does not forbid giving special commercial privileges for a valuable consideration (pp. 100-107).

Sir Thomas thinks that Danzig is too distinctively German to be permanently detached from Germany, but that if such detachment is to be essayed, it might be possible now to establish a free dock or harbor in its territorial waters (p. 112).

The secret Treaty of Bucharest, made August 4/17, 1916, which pledged Roumania to declare war against Austria-Hungary, and placed her own territorial integrity under the guarantee of the Allies, is given at length (p. 118).

The author regards a homogeneous language as the only feasible type of nationality (p. 142).

Who is capable of speaking at the present day with any certainty of race apart from language?

Historically speaking, nationality is a political fact based on the existing circumstances of modern state development in which geographical and economic considerations, commercial outlets, the course of navigable rivers, mountain ranges, mineral resources and all the material requirements of existing communities working out their own salvation amid the contending rivalries of their neighbors are creating common interests, a common policy, and a common language out of sheer necessity (p. 153).

The suggestion is made that

It is in the joint interest of national finance and international peace that henceforward all production of articles of no use except for purposes of war shall be state monopolies, a war indemnity to be paid to present owners, in which any exceptional rate of profit made during the present war or in preparation for it shall be debited in reduction of the gross amount payable (p. 185).

Sir Thomas looks hopefully to future advances in international law.

Law is the one stable element in the life of communities. Even bad law is better than disrespect for it, because the alternative for bad law is not necessarily good law, and the stability of law is the common basis of all social and commercial intercourse. To labor anything so obvious is supererogation, and I need only add that what is true of the domestic intercourse of nations can only be true of intercourse between nations. To say that international law is dead is, therefore, about as true as to say that an inundation or an earthquake puts an end to engineering and architecture. Far from it, the need of a law binding on nations, and which nations will respect and may even be forced to respect, is inherent to the idea of that Society of Nations to which the peoples of the world are looking forward as a safeguard against lawless ambitions, whether of potentates, statesmen, bureaucracies, oligarchies or democracies. . . . The reaction in the case of the recent war is toward sanctions for the enforcement of the law of nations, and hence to the conception of a Society of Nations capable of enforcing respect for it (pp. 188, 189).

The author urges suitable provision for a broad and general education in international law. For this purpose he proposes the creation of professional chairs in "the Universities of London, Paris, Berlin, Vienna, Rome, Petrograd, New York, and Tokio" (p. 198).

He warmly favors the extension of the principle of neutralization.

The principle of neutralization is still one of the most promising of modern political developments for restriction of geographical areas exposed to the calamities of war. If one aggressive state broke its promise, other states respected theirs, at any rate as regards Belgium and, on the whole, the *de facto* situation is favorable to reliance on good faith being observed where the terms of a treaty leave no room for equivocation. With the interdiction of secret treaties and the control of foreign policy by the respective parliaments of the high contracting parties to the coming settlement, international affairs may be brought into line with the ordinary straightforward rules of conduct by which honest private citizens consider themselves bound, and neutralization by treaty or proclamation may become one of the different processes of law by which war may eventually become as obsolete as duelling" (p. 209).

Sir Thomas is not an unqualified admirer of democratic government.

The break-up of the three greatest instances of empire may result in eventual federation of all three as a League of Nations for defence against the reaction which may be in course of evolution in countries which have hitherto been the home of political freedom, for seldom if ever in history has victory been of advantage to popular liberties. This union for self-preservation against external neo-aggressive tendencies may present material features of great importance for the future of democracy throughout the world (p. 252).

This horoscope presents a possibility worth careful thought. Germany, Russia and Austria-Hungary, confederated for the preservation of a democratic world, would certainly bring a strong force into world-politics.

Attention is drawn to the differences between the French and English editions of the Covenant of the League of Nations, for *League* the French having substituted *Société*, a more inclusive term.

SIMEON E. BALDWIN.

The Making of the Reparation and Economic Sections of the Treaty. By Bernard M. Baruch. New York and London: Harper & Bros., 1920, pp. 353.

This book is of particular interest as furnishing information not hitherto made public regarding the negotiations of the reparation and economic sections of the Peace Treaty. Mr. Baruch in a note preface to the volume states that he alone is "responsible for the statements made in this volume," but in view of the position he occupied at the Peace Conference as Economic Adviser to the American Commission to Negotiate Peace, and member of the Economic Drafting Committee, of the Reparation Commission, of the Economic Commission and of the Supreme Economic Council, and the fact that, as he himself states, he has confined himself in this book to a discussion of only those matters with which he was "directly concerned in the making of the treaty," his book is of historic value.

The negotiations concerning the reparation clauses and the economic clauses are dealt with separately, and the provisions of the treaty itself dealing with these matters are included in the volume, which also contains an addenda comprising the addresses made on behalf of the American, French and British delegates on the principles of reparation. The addresses of these delegates are particularly enlightening as to the divergent views held by several of the governments regarding the principles of law and equity to be applied in assessing the reparation demanded from Germany.

It appears that the American delegates contended that reparation should be based strictly upon the so-called contractual obligations imposed upon Germany through President Wilson's pre-armistice negotiations, as approved by the Allied Powers, in addition to the obligations arising by operation of law for admittedly illegal acts.

The obligations imposed by the pre-armistice negotiations were that invaded territories must be restored as well as evacuated and made free, and that Germany must make compensation for all damage done to the civilian population

of the Allies and to their property by the aggression of Germany by land, by sea, and from the air.

The British contended that inasmuch as Germany's invasion of Belgium was an illegal act because in violation of the Belgian Treaty of Neutrality, the necessary result of which was to involve the other Powers in the war, Germany was under obligation to make compensation for all the consequences of that illegal act, including the entire war costs incurred, not only by Belgium, but by all the Allied and Associated Powers as well.

In support of the British contention that Germany should bear the entire war costs, the French delegation advanced the additional argument that the armistice agreement of November 11th superseded the pre-armistice agreement, and they were at liberty to enlarge the terms of that agreement for the reason that "Germany surrendered on November 11th because she was conquered, and not because she found acceptable and equitable the conditions of President Wilson and of the Associated Powers."

The question was referred for settlement to the Supreme Council, and it was finally decided that the only direct war expenditures of the governments which should be included (except in the case of Belgium, which is to receive compensation for its entire war losses), were their expenses for pensions and separation allowances. The principle governing the decision of the Supreme Council in drawing this seemingly illogical distinction between the entire costs of the war and the cost only of pensions and separation allowances is not disclosed. The practical result of the decision, Mr. Baruch estimates, was to increase the amount of indemnity to be apportioned to Great Britain approximately from 19% to 40% of the total amount Germany can be made to pay, and it is pointed out that unless the amount which can be collected from Germany exceeds the wildest dreams of what she will be able to pay, the nations whose territories were occupied and devastated will receive considerably less than if the restitution Germany is called upon to make excluded all direct war expenses of the governments, which the United States delegates contended would have been more in accordance with hitherto accepted international law principles.

There seems to have been no disagreement, however, among the respective delegations as to the necessity for enforcing respect for international law by exacting from Germany penalties sufficiently heavy to deter any nation in future from violating the international obligations imposed upon it by treaty or by the accepted law of nations. The provisions of the treaty imposing these penalties deal with political questions, commercial and industrial subjects from the standpoint of international relations, and private rights in various aspects, and they involve technical and difficult questions of domestic law, of international law, and of international practices. Mr. Baruch's comments on these provisions and his explanation of conflicting views and interests which had to be harmonized in order to reach an agreement, are valuable contributions to a proper understanding of the meaning and purpose of the treaty.

In addition to expounding the treaty provisions, Mr. Baruch also calls attention to several subsidiary agreements or understandings reached by the Allies among themselves outside of the treaty, which were intended to establish their

respective interests and participation in the spoils of war. For instance, Mr. Baruch states that the Allied and Associated Powers adopted the general principle that they would share in Germany's reparation payments in proportion to their allowed claims, except that they agreed to give to Belgium a priority in certain payments to permit its immediate restoration. He also states that they adopted the further principle of joint and several liability as between Germany and Austria-Hungary. The purpose in adopting these principles was that "all of the assets of the enemy states should be pooled into one fund, and that all of the Allied and Associated States should share in this fund in proportion to their approved claims."

Another subsidiary agreement entered into by the Allied and Associated Powers related to the disposition of the German ships. As to these ships the French proposal was "to allocate to the Allied and Associated Powers in proportion to their respective war losses, and to place in a pool for that purpose, all ships which on August 1, 1914, flew the German flag. This would have resulted in the pooling of all ships condemned by prize court (chiefly British) and ships seized in the Western Hemisphere (chiefly by the United States and Brazil)."

The British proposed "the pooling of all ships which on the date of the coming into force of the treaty were entitled to fly the German flag. This, in the British opinion, would have pooled ships seized by the United States, Brazil, Cuba, etc., without prize court decisions, and would have left undisturbed the title to ships which had been passed through the [British] prize court."

The American delegates proposed that "title to all German ships seized during the war should be confirmed in the captor nation, and that only the remaining German ships be placed in the pool."

Mr. Baruch states that "President Wilson declined to accede to any proposition that would involve the surrender by the United States of ships which had been taken over by act of Congress," and the "problem was finally solved by agreeing to place all the belligerents on an equality. The right was recognized to retain seized German tonnage upon the condition that payment be made for reparation account up to the fair value of the ships retained in excess of those apportioned to replace war losses."

So far as concerns the United States, all of these agreements, like the treaty itself, must be understood as requiring the advice and consent of the Senate before ratification.

The reparation and economic clauses of the treaty deal with matters which vitally affect the whole world, as they furnish the terms upon which Germany makes restitution and resumes commercial relations with the other nations which have ratified the treaty. Therefore, until such time as the official records of the Peace Conference are made public, Mr. Baruch's book will be of special value to all interested in learning the inside history of the economic and reparation provisions of the treaty and the conflicting interests of the various countries which were harmonized in the drawing of those provisions.

Mr. Baruch treats the subject in an absolutely dispassionate manner, making full allowance for human frailties, and offers as an excuse for much of the

criticism which has been aimed at the treaty that it "was made in the still smoldering furnace of human passion," and he explains that

It is a fundamental mistake to assume that the treaty ends where it really begins. The signing of the document on June 28, 1919 at Versailles, did not complete its history; it really began it. The measure of its worth lies in the processes of its execution and the spirit in which it is carried out by all the parties to the contract. . . . In the Reparation Commission there was created a flexible instrument qualified to help effectuate a just and proper peace, if that desire and purpose be really present. When the world more fully and humanely understands and measures the problems in question they can be soberly and wisely resolved.

CHANDLER P. ANDERSON.

The Italian Emigration of Our Times. By Dr. Robert F. Foerster. Cambridge: Harvard University Press. 1919. pp. xv, 556. Price \$2.50.

Among the great fields of migration today Italy, no doubt, easily ranks first. From 1869, when a hundred thousand emigrants were recorded, the number has gradually increased until, in the years just before the World War, 179 out of every thousand inhabitants were leaving Italy annually.

Why this great departure? The answer is simple. The effects upon agriculture of deforestation,—which has gone hand in hand with the abolition of feudalism and the secularization of ecclesiastical lands; lack of education of the great mass of people,—in the provinces in the south, from which most of the emigrants come, as many as three out of four above the age of six years being unable to read or write; the scourge of malaria, and the results of absenteeism and the agrarian contracts (the evils of which are now reported to have been materially decreased by legislation enacted since this book was published), are the reasons given by Dr. Foerster for a production that is greatly insufficient to sustain the large and rapidly increasing population.

The author has followed the Italian emigrants into the various states to which they have gone in Europe, Africa and America, with the purpose of determining whether the economic benefits that have come to these states and to the emigrants themselves compensate for the loss that Italy has suffered as a state by the world-wide dispersion of such a large part of her race. His answer is in the negative, and he concludes that only by remedying conditions so that Italians may remain at home will Italy be able to continue her notable contribution to civilization.

Dr. Foerster has divided Italian emigration into three periods: the first, until the year 1895, in which period emigration was deplored; the second, from 1895-1908, when emigration was deemed necessary on account of the economic problems which faced the country; and the third, from the year 1908 to the present time, in which period it was considered that on account of the benefits to the state, emigration should be cherished and enlarged under proper direction.

When this last idea developed, the Italian Government began providing assistance for the emigrants in foreign lands by establishing legal bureaus for their protection, and in case of death under circumstances establishing liability to see that indemnity was paid and forwarded to their heirs in Italy. These

bureaus have been under the direction of the consuls, who, for the most part, have been capable and efficient and anxious to serve their countrymen.

The author, however, feels that Italian emigration, even though it has brought certain economic advantages, has been a distinct evil. His suggestion is that rather than seek to help the emigrant after he reaches the foreign land, the work should start at home. Certainly the state should provide an adequate system of schools throughout the land. Reclamation of the land under the direction of forestry experts and engineers would go far toward providing a livelihood for a greater per cent. of the population.

Many may disagree with the author's statement that Italy's work in helping the emigrants abroad, rather than at home, has been prompted by imperialistic motives. The part that she played in the World War would hardly seem to justify such a conclusion. All, however, will agree with the suggestion—and it is with this part of the work that the student of international relations is concerned—that at this time, when we are seeking to establish national rights and obligations and to lessen the causes for international misunderstanding, we cannot afford to overlook the great problems of emigration. The time is ripe for instituting international conferences to advise concerning matters of emigration. The topics suggested for consideration are: (1) the adoption of standards of fitness for emigrants; (2) the distribution of fit emigrants; (3) the question of citizenship and means of avoiding the disturbing problems of dual citizenship; and (4) the protection of emigrants. Such a plan merits earnest consideration.

May it not also be suggested that in the meantime the United States should take steps which would at least remedy certain unfortunate situations in respect to emigration and would help to remove those causes of ill feeling that have on occasions existed between the two countries in cases of alleged treaty violations.

There have been several misunderstandings between the two nations on account of the failure of local or State authorities in many parts of the United States to apprehend and punish the perpetrators of acts of mob violence. If legislation were enacted giving Federal courts jurisdiction in such cases, our government would then be in a position to fulfill the guaranty of the Italian treaty in respect to the protection of Italian subjects and their property. Further treaty provisions giving consular officers full rights of representation of absent or deceased countrymen would also aid materially in securing a better international understanding and coöperation.

The author points out that on account of local laws we have sometimes discriminated against non-resident alien heirs, and cites the *Maiorano* case,¹ where a widow, on account of her non-residence, was not permitted to recover an indemnity for the death of her husband who was killed while employed on an American railroad. He fails to note, however, that the United States by ratifying the treaty of February 25, 1913, endeavored to correct this situation.

On account of the position of America and the regard in which she is held, it would seem eminently proper at this time of international readjustment to consider our own duty in providing for new treaties, and to be eager to coöperate in the work of an international convention, such as has been suggested.

¹ *Maiorano v. B. & O. R. R. Co.*, 213 U. S. 268.

One can scarcely hope to have all his readers agree with his conclusions. The work of Dr. Foerster shows a scholarly study, a careful and painstaking analysis of causes and effects, and provides ample food for thought upon the important problems presented; and when one provokes thought upon a subject that is vital, he really has accomplished that which is, after all, most important.

CHARLES H. WATSON.

Mein Kriegs-Tagebuch. Vol. III: Das Dritte Kriegsjahr; Vol. IV: Das Vierte Kriegsjahr und der Friede von Versailles. By Dr. Alfred H. Fried. Zurich: Max Rascher Verlag. 1919-1920. pp. 320, 461.

These concluding volumes of the war-diary of the Nobel Prize winner for 1911, give the impression of the accomplishment of a remarkable *tour de force*. Laboring under the conflicting emotions of loyalty to his own people and of abhorrence of the moral guilt of the German and Austrian Governments, Dr. Fried nevertheless detaches himself personally from the conflict and applies an objective and sane moral test to events and policies as the war progresses. He belongs to that small group of able men of the type of Foerster, Lammasch, Lichnowsky, Muehlon and Nicolai, who had the moral courage to brave the obloquy of their own countrymen by their opposition to an unrighteous war. The penalty which such men must pay has been visualized for us in Galsworthy's absorbing play, "The Mob."

At each turn, the author endeavors to unmask the insincerity of the pan-Germans and militarists. Thus the intervention of Roumania on the side of the Entente was characterized in Berlin as a mere act of treachery. The author holds it up as a mirror wherein the defenders of the principle of military necessity may see reflected the implications of their own doctrines (III, p. 27). He defends President Wilson's message of January 22, 1917, "Peace without victory," as the crowning of the pacifist's ideal. He complains bitterly of the distortion to which this and other international documents are subjected at the hands of incompetent translators (III, p. 143). But this criticism might have applied with equal force to almost all countries during the war, and, indeed, for that matter to peace times as well.

Just as in the earlier volumes he correctly foresaw the intervention of the United States, so he now sounds a warning against the underestimation of American military strength. Make peace before it is too late,—to retreat in the face of overwhelming power is not shameful, provided the country may be saved. American intervention signifies the solidarity of the world under the banner of freedom and democracy. If the artificial bonds linking the peoples of Germany and Austria-Hungary to a wornout system could be removed, there could be peace on the morrow, and a new world would emerge (III, p. 199). Such were his thoughts in January, 1917. In April, he considers American intervention from another angle. A stiffening in the terms of the Allies and a threatened dismemberment of Austria-Hungary leads him to say: "I have such absolute faith in the disinterested pacifism of Wilson that I welcome his association with the Entente as the surest guarantee against the annihilation plans of Entente

statesmen" (III, p. 212). This confidence he retains until the end of the war, only to lose it tragically during the Peace Conference.

The author never deviates from his rigid pacifist standards even under the greatest temptation. The award of the Nobel Prize in 1917 to the International Committee of the Red Cross he considers to have been a mistake, even though the great humanitarian purposes of the Red Cross are thus promoted. But, he maintains, the Nobel foundation should be regarded not as a sum of money, but as the crowning of an idea, the abolition of war; the amount of suffering which the Red Cross was able to relieve was small in comparison with the infinitude of misery caused by the war, which for the future can be overcome only by the abolition of war, not merely by ameliorating its effects (IV, p. 94).

The diary continues to the close of the Peace Conference, which to the author was a disappointment almost as grave as the war itself. "Wilson approaches like a saint bringing salvation after this most terrible trial. Will he be heard or will he also end upon the cross?" (IV, p. 363). Curiously enough, he soon becomes an active opponent of Wilsonian policies and attacks the Covenant immediately after its presentation, upon the following grounds: because it relies preponderantly upon the dilatory method in the settlement of international disputes; because governments change, and a war-loving statesman may some day reduce the League to a mere formality by securing allies within the League; because it assumes a blind faith in the functioning of the machinery at critical moments. The author insists, instead, upon a change in the old methods by substituting a community of interest leading to more neighborly and upright international relations. "Lifeboats and lifebelts alone do not suffice against shipwreck if the ship itself is not built weatherstrong and seaworthy" (IV, p. 376). The author has by this time forgotten his earlier enthusiasm for both the dilatory method and the League (see II, pp. 7, 171, 263; IV, pp. 103, 232). Perhaps we should not judge him too severely as he returns to Vienna after four years, only to find his country dismembered and in ruins, many of his friends dead, his best hopes shattered. Under such circumstances, he is not in a psychological state to give us more than destructive criticism. He sees only the wide discrepancy between the technical efficiency of the present era and its weakened spiritual values. "Only a new humanity can bring redemption" (IV, p. 403).

In view of the recent publication in English of so many memoirs from enemy militarist sources, the reviewer ventures to hope that the present work will ultimately also appear in English form to make available to English readers the observations of this eminent Austrian pacifist. Most of the entries in this diary were published from day to day as the war progressed, free from editing *ex post facto* and therefore of permanent interest and value.

ARTHUR K. KUHN.

Transactions of the Grotius Society. Volume V, 1919. Problems of Peace and War. London: Sweet & Maxwell, Ltd. 1920. pp. xxvi, 154. 6s.

This number of the Grotius Society papers contains less material on technical problems of international law than its predecessors, but furnishes more matter

than they gave us on international organization. Although not a symposium representing the entire association, for the views of but a few of the members are reported, and some of the writers are not members of it, we may distinguish this number from the others by calling it a League of Nations number. Seven of the writers deal more or less directly with this subject. F. N. Keen writes on the "Revision of the League of Nations Covenant"; Major David Davies, M.P., on "Disarmament," referring to the article on armaments in the Covenant; and C. A. McCurdy, M.P., on "The League of Nations—The Work of Lawyers." Right Hon. Syed Ameer Ali, who was present at one of the meetings, made an impromptu address on "Islam in the League of Nations," and Miss Sophy Sanger, the first lady to address the Society, read a paper on "The International Labor Organization of the League of Nations." E. A. Whittuck, whom we know in connection with his compilation of international documents, writes on "A Court of International Justice," and compares the judicial institutions projected at The Hague conferences with the provision made for a court in the Covenant. Dr. W. Evans Darby approaches the question from a distance by giving an exposition of "Cardinal Alberoni's Proposed European Alliance for the Subjugation and Settlement of the Turkish Empire, 1735." If Mr. Whittuck is admirably succinct in his statement of the arrangements for an international court, Dr. Darby sustains his reputation as discoverer of past plans for world organization.

It may be asked whether or not the members of the Grotius Society and their guests who went on record believe in the present League of Nations. Yes and no; but on the whole, yes, apparently with disinterestedness and without partisan bias such as might discount the views of an American, but with criticisms, reservations and recommendations that go so far as to propose a commission for the revision of the Covenant. Mr. Keen, who proposes the commission, is a friendly critic of the Covenant, but calls attention to a number of defects in it and to kinds of defects that might escape notice. The paper of Major Davies, if less analytical than that of Mr. Keen, is more speculative. He is strong for international police. He suggests that there should be organized under the League a headquarters force with divisions to preserve order distributed in different parts of the world. He advises as a remedy for the old system of national armaments, ever increasing and changing with new discoveries of science, that war's newest weapons—poison gas, war planes, heavy artillery and tanks—be ceded to the League, which alone should control new military inventions, together with submarines and the latest type of battleships, and that the armaments of the different states should be restricted to their protection from internal disturbances.

Mr. McCurdy, although a lawyer, introduces into his paper for the sake of provoking discussion, some broad moral and religious considerations rather than legal technicalities. He is impressed by the need of educating public opinion against war. He condemns the traditional international law of Grotius, which, in his judgment, is more respected in its breach than its observance. This system regards war as a normal occurrence, and has rules for the conduct of war and for the rights and duties of neutrals; but under the system which it is proposed to introduce by the Covenant, "the nations will no more dream of subscribing to a code for the conduct of war than national states at present

dream of drawing up codes for the perpetration of murder or theft, and the so-called rights of neutrals will disappear." He holds that the observance of order depends not upon enactments, or policemen, or even upon agreements, but upon a high standard of morality operating in the consciences of the people as a restraint upon evil-doing. He declares that the principles of ethics that apply to individuals must also apply to nations, and that above all else, if war is to be stopped, an unrepentant world must be convicted of a sense of sin.

The Right Hon. Syed Ameer Ali argues for a place in the League for Islam, especially for Turkey and Persia (which latter state was not then included), such as is accorded to two Buddhistic states and to Hedjaz, which, however, represents only a section of Arabia that has revolted against the leadership of Islam. Miss Sanger gives a hopeful account of the work to be undertaken by the international labor organization under the League of Nations.

The Grotius Society, however, keeping in view war as well as peace, in harmony with its name, still hears papers on rules for the conduct of war. Rear Admiral S. S. Hall writes on "Submarine Warfare," and Admiral Sir Reginald Custance on "The Freedom of the Seas"; George G. Phillimore and Dr. Hugh H. L. Bellot on the "Treatment of Prisoners of War." These are types of papers that have characterized the Grotius collection, which is the outgrowth of the World War, and differentiated it from the usual type of American discussions of international law, which have been more largely devoted to constructive schemes of world organization than to the reform of laws relating to hostilities. The laws of war and neutrality, however, still have a place in the writings of publicists, and may be of value for the future unless war is actually abandoned, which has been far from the case since the armistice was declared and the League projected.

It is impossible to summarize all these papers, but reference may be made to the views of Rear Admiral Hall on submarine warfare. He proposes to save enemy and neutral shipping from destruction by united international action against the use of the torpedo, which was the chief cause of the destruction of shipping during the World War. He would put an end to the sinking of merchant ships by submarine torpedo vessels firing without warning, and together with this practice, the use of false colors, disguises, decoys, depth bombs, and even the dropping of bombs from aeroplanes; but is in favor of allowing prizes which may be captured but never destroyed, to be taken into neutral ports if only to restore the balance to small Powers. He advocates cruiser warfare with submarine vessels armed with guns, giving due warning, like surface craft when using the torpedo at night, and the capture of prizes as in ordinary surface warfare. He believes cruiser submarine warfare to be entirely practical, and says that, had Germany followed it, as shown by some successful experiments with submarine cruisers, she could have complied with international law and would have won the war, probably without offending America. But the arming of merchantmen, which some writers discourage, should in his opinion not be forbidden unless convoy, which made the ordinary submarine legitimate by offering it resistance, is also forbidden. The proposed surrender of a merchant ship on summons by an enemy craft is objectionable, as it would tend to destroy

the *morale* of the crews of merchantmen and strangle the sea-trade of Great Britain.

Pertinent to the name and purposes of the Grotius Society, as well as informing to students of international law, though outside the range of war problems, is a critical study by W. S. M. Knight of "Grotius in England." This should be read in connection with a discriminating address that Sir John Macdonnell delivered on "The Influence of Grotius," on taking the chair as the successor of Professor Goudy, who has retired from the presidency of the Grotius Society. It might well also be read in connection with Andrew D. White's laudatory essay on Grotius in his *Seven Great Statesmen in the Warfare of Humanity with Unreason* which is offset by the portrayal of the character of this great publicist by Mr. Grant. Mr. Grant tells us that Grotius flattered kings for the sake of getting into their society, that he wrote *De Jure Belli ac Pacis* in order to make his way into diplomatic service, and that while acting as an attorney for Holland he tried to persuade Great Britain to adopt views the opposite to those laid down by him in *Mare Liberum*. Future writers on Grotius should see this study before accepting conventional accounts of him and certain dates given for events in his life.

JAMES L. TRYON.

On Jurisprudence and the Conflict of Laws. By Frederic Harrison, with annotations by A. H. F. Lefroy. Oxford: Clarendon Press. 1919. pp. 179.

This volume should be welcomed by every law student and by all who seek a presentation in brief and lucid form of the fundamental conceptions of jurisprudence. While the distinguished author of the five lectures which make up the text is better known at the present day as a critic and historian (cf. his *Early Victorian Literature*, *The Choice of Books*, *Byzantine History in the Early Middle Ages*), he here appears as a jurist of high rank whose thought and style are both logical and clear.

Mr. Harrison was appointed in 1877 by the Council of Legal Education professor of jurisprudence, international law (public and private), and constitutional law, and lectured at the Inns of Court for twelve years, Mr. Bryce being his colleague with courses on the civil law of Rome. The lectures of Mr. Harrison appeared in the *Fortnightly Review* in 1878 and 1879, and are now printed as revised by the author and with annotations by Professor A. H. F. Lefroy of the University of Toronto. Despite the fact that in 1918 Mr. Harrison had reached his eighty-eighth year and had long ceased to labor in the field of jurisprudence, many friends were anxious to have these studies placed in an accessible form; and the result has assuredly justified their wishes.

Two of the five lectures are concerned with Austin's conception of sovereignty and his analysis of law; the third lecture discusses "The Historical Method," while the remaining two test with exactness and breadth of view the difficult "Conflict of Laws." John Austin lectured at University College (now London University) from 1828 to 1832, when he resigned and published his *Province of Jurisprudence Determined*; he died in 1859.

Mr. Harrison thus sums up, at page 24, Austin's teaching on the analysis of sovereignty and law:

1. The source of all positive law is that definite sovereign authority which exists in every independent political community, and therein expresses *de facto* the supreme power, being itself unlimited, as a matter of fact, by any limits of positive law.

2. Law is a command relating to the general conduct of the subjects, to which command such sovereign authority has given legal obligation by annexing a sanction, or penalty, in case of neglect.

Further on at page 28 he adds:

Shortly stated, the theory of Austin as to sovereignty amounts to this: The force of all law is derived from that ultimate sovereign authority which in every independent political community actually exercises an unlimited power of command and is habitually obeyed by the bulk of the community. Now this proposition seems to me perfectly true, and in fact to be almost a truism, if we understand it in the sense in which it is said; i.e., as true for the lawyer from the point of view of formal and scientific law. And for that very reason, it is of such signal use in clearing the brain for the student who comes to law from the study of morals or other branches of social science. But from the point of view of a complete social philosophy, from the point of view of scientific history and scientific politics, the proposition requires so much qualification and correction, that it ceases to be a complete account of the matter at all.

Touching Austin's analysis of law, Mr. Harrison tells us (page 37):

We have spoken of Austin's definition of sovereignty. We will pass to the second of his leading propositions, the definition and analysis of law. In this he is the editor and expositor of Bentham, who himself follows Hobbes. Gathering up their statements, the combined results amount to this: Law is a general command, which the determinate Sovereign, or supreme political authority of a State, has imposed as an *obligation* on all, or a part of its subjects, and which command it enforces by a *sanction*. Austin insists that law involves always these three elements, which in law are correlative and mutually imply each other: (1) command, (2) obligation, (3) sanction; and the whole depends on the sovereign authority of an independent political community, such sovereign being possessed of unlimited power.

This analysis of law is open to observations similar to those already made as to the proposition about sovereignty. That is to say, it must be understood from the point of view of the lawyer, and as being only one of the aspects of the question.

These conceptions, it appears, are essentially those of Bodin (1581). To Mr. Harrison's comprehensive criticism of Austin's work, Professor Lefroy has added (pages 149-173) a series of illuminative notes, together with well chosen extracts from Holland, Bluntschli, Pollock, Bryce, Prof. W. Jethro Brown, Mr. Holdsworth (*History of English Law*), Mr. Justice Markby, Mr. J. Neville Figgis, Prof. Salmond, and others.

To the reviewer it is a pleasure to note Mr. Harrison's appreciative paragraph (at page 21) touching Blackstone:

it being conceded that Blackstone wrote and thought in the age of vague commonplace about the ultimate sanction of law and of mysterious veneration of the British constitution, it is to be regretted that Austin should fill the mind of the beginner with contempt for a work like the *Commentaries on the Laws of England*, which is not only in itself a masterly work of art, but is still the only available attempt to cast into a literary form a comprehensive panorama of English law as a whole. Austin was absorbed in keeping his grasp with rigid

tenacity on certain coherent conceptions. Blackstone was occupied in arranging the complex labyrinth of English law into such an artistic composition as should at once impress the imagination of his lay readers. And this he has undoubtedly succeeded in accomplishing—and he alone has succeeded.

Lecture III, "The Historical Method," seems to the reviewer in all respects admirable. It was written in 1879, or ten years after the appearance of Dr. Stubbs' *Constitutional History* and precisely when Freeman's historical labors were producing their notable harvest. "The historical method in law," says Mr. Harrison (pp. 71, 80, 86),

is the special resource and almost the discovery of our immediate time, and it is important for the lawyer to recognize its proper use and its available limits. The historical method, it is true, can give us nothing of the existing state of the law as we want it for daily practice. . . . What is the practical conclusion to which I would point? It is that the historical method is one of the resources of jurisprudence, not the substantive part of it, and in no sense an independent part of it. It would be possible to have a very great and varied knowledge of the history of any legal system, and yet never to grasp it at all as a coherent and symmetrical scheme. For the lawyer the great interest always must be what is the law as it is. How it has become what it is, is a very useful inquiry. But this will become positively confusing if the subordinate inquiry is ever allowed to stand on equal terms with the main inquiry—the law as it is, as it is at any given time.

And he well continues (page 87):

all this points to making the historical inquiry merely an instrument of jurisprudence, and never to take it for jurisprudence itself. Scientific jurisprudence should tend always to look at a system of law complete as a working whole at any given time. The sympathies will be always toward the rational and scientific modes of classification; to the final type of any system, not to its rudimentary forms. The historical inquiry unrestrained constantly tends on the other hand toward the anomalous, the accidental, the initial type of the institution. The only way to guard against this is to use the historical method in jurisprudence strictly and simply as an instrument. . . . [p. 89] The historical method is thus a potent and fruitful instrument of jurisprudence, but it is very far from being the last word of jurisprudence. That must always be looked for in the analysis and consolidation of the actual doctrines of law under systematic titles. . . . [p. 90]. The root of the matter, I suppose, is the scientific analysis and distribution of legal doctrines and statutes, and their consolidation into a symmetrical and practical whole. This is doubtless a great, and possibly a far distant work; but it is one that is impossible without a real and sound jurisprudence. And the methods of such a jurisprudence will probably be found to be three, of which no one should exclude or can supersede the others—the analytic, the historical and the comparative.

Lectures IV and V contain a careful examination of the development of the science which we term the "Conflict of Laws" or "Private International Law." At the outset of any study of this highly complex and important system, it is necessary clearly to differentiate it from international law or the law of nations. In the celebrated case of *Hilton v. Guyot*, decided by the Supreme Court of the United States at October term, 1894 (159 U. S. 113, 163), Mr. Justice Gray said:

international law, in its widest and most comprehensive sense—including not only questions of right between nations, governed by what has been appropriately called the law of nations, but also questions arising under what is usually called private international law, or the conflict of laws, and concerning the rights of persons within the territory and dominion of one nation by reason of acts, private or public, done within the dominions of another nation—in part of our law, and must be ascertained and administered by the courts of justice, as

often as such questions are presented in litigation between man and man, duly submitted to their determination.

The most certain guide, no doubt, for the decision of such questions is a treaty or a statute of this country. But when, as is the case here, there is no written law upon the subject, the duty still rests upon the judicial tribunals of ascertaining and declaring what the law is, whenever it becomes necessary to do so in order to determine the rights of parties to suits regularly brought before them. In doing this, the courts must obtain such aid as they can from judicial decisions, from the works of jurists and commentators, and from the acts and usages of civilized nations. (*Fremont v. United States*, 17 How. 542, 557; *The Scotia*, 14 Wall. 170, 188; *Respublica v. De Longchamps*, 2 Dall. 111, 116. *Moultrie v. Hunt*, 23 N. Y. 394, 396.)

No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by practical decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call "The Comity of Nations." Although the phrase has been often criticized, no satisfactory substitute has been suggested.

In a subsequent paragraph of the opinion, Mr. Justice Gray took occasion to refer (p. 215) to the question of remittance or *renvoi* of a cause from the courts of a country to which it had been thought proper to send it to the forum where it originated, citing a case determined at Paris by the *Cour de Cassation* in 1819, where the expression is used "*obtint son renvoi devant les tribunaux Américains*." *Renvoi* was discussed at length a few years later (1904) by Mr. J. P. Bate in his *Notes on the Doctrine of Renvoi*.

Not merely, however, must we mark well the fundamental distinctions between the law of nations and the conflict of laws, but we must find an appropriate designation for our science. This has scarcely as yet been done. Yet the necessity for such a science becomes obvious if we consider that transactions are continually being brought for decision before all courts of justice, which in whole or in part depend for their legal quality on the laws of a state different from that which has to try them. There is here no essential conflict but merely ambiguity, arising from the fact that more than one set of coördinate laws apparently apply to the case. The phrase of Savigny is strictly exact: Private international law marks the limitation of legal rules in respect to place. Our author proposes the term Intermunicipal Law, and would describe this science as "The law of compound jurisdiction" (p. 131). It does not seem, however, that "Intermunicipal" is likely to prove satisfying. Again we may employ the term "Private International Law" because our science rests upon "the doctrine of the equal sovereignty of friendly nations and the desire of civilized states to treat their neighbors civilly as well as politically, with equal justice." The applicable law, nevertheless, is *municipal*, since it springs from judicial determination and has no concern with diplomatic relations or with the intercourse of governments or states. It is not international. It is, as Mr. Harrison shows, indeed, somewhat older than modern international law, since we can trace its principles to the famous Legist Bartolus of Sasso Ferrato in the March of Ancona.

Mr. Harrison follows the development of our science through the writings of Argentræus (D'Argentré) of Brittany (1608), Rodenburg of Utrecht (1653).

Paul and John Voet, Ulrich Huber (1606) whose brief but really immortal *De Conflictu Legum* is a world landmark in legal science, and Hert, professor at Giessen, who termed his little treatise (1668) *De Collisione Legum*.

Later, and in France, development was carried on during the first half of the eighteenth century in the works of D'Aguesseau, Bouhier, Froland, and Boullenois; in 1834 there appeared the work of Story on the conflict of laws. During the next twenty-five years the subject was ably treated in England by Phillimore and Westlake, and has been discussed in more recent years by many others in England and on the Continent as well as in our own country.

As a preliminary study in a great subject, it would be difficult to point the student to more truly illuminating pages than those of Mr. Harrison. Few in number as are these pages, they would appear to deserve well the rank of a classic and can scarcely be too highly praised.

GORDON E. SHERMAN.

American World Policies. By David Jayne Hill, New York: George H. Doran Co., 1920, pp. 257.

Dr. Hill's views, as to the foreign policies of the administration of Mr. Wilson, were expressed with some fullness in his previous volume, *Present Problems in Foreign Policy*, and in many notable magazine articles and platform addresses. In fact, Dr. Hill has won a principal place in the great discussion as a protagonist against Mr. Wilson. No public official, no party leader, has spoken and written more copiously or with greater weight. He has brought to his task long official experience in international affairs, and years of European study in international history, if we may use the term. He has conducted his discussions with great dignity and moderation. No one's contribution to this vital question has in consequence been more widely considered or respectfully received.

It is, of course, no matter of surprise to find the present work a vigorous, systematic and comprehensive assault on most that has been accomplished or proposed by the present administration in foreign affairs, and especially as to the League of Nations. The opening paragraph of the preface of this new book indicates the gravity of the situation as Dr. Hill conceives it.

"American participation," he says, "in an attempt to reorganize the international relations of the entire world with the expectation of permanent peace by means of a punitive treaty requiring military force to execute it, presents the most serious problem that has ever arisen in connection with the foreign affairs of our country."

He points out that the Covenant of the League of Nations "is not a general 'Association of Nations' of a pacific character to secure international justice, but a limited defensive alliance for the protection of existing possessions, regardless of the manner in which they were acquired by their rulers, wholly indifferent to the wishes of the population thus held in subjection, and controlled by a small group of great Powers whose supremacy is based solely upon their magnitude and military strength," and he adds, "It hardly needs to be stated

that a League of this character does not embody the American conception of what such an association should be." He insists "there must be substituted the enforcement of peace by conformity to International Law as a body of just and equal rules for the conduct of nations in their relations with one another."

In this volume he aims to submit to the friends of the League "a satisfactory statement of the reluctance felt in the United States by those who are deeply interested in the peace of the world to accept without change the Covenant of the League as it was prepared at Paris under the pressure of more immediate interests." He says, that in speaking of Americanizing the Treaty of Peace, no change to give the United States an advantage over other nations is meant, but, "What we mean by it is a refusal to participate in any compact that would destroy or pervert our national character by subjecting our action to a control not in harmony with our principles as a nation." He adds, "It is timely for our friends in England, Canada, Australia and elsewhere to know that the best service we can render them is to continue to be ourselves."

His discussion is contained in eight chapters and an epilogue, covering some 188 pages, and he prints at the close eight documents, including President Wilson's Points, The Covenant of the League of Nations, Ex-Senator Root's letter to Senator Lodge, and the various Reservations of the Senate.

The first chapter is entitled "Disillusions Regarding the League." He finds that Europe, as Washington pointed out, possesses "a set of primary interests," with which we, a constitutional republic without dynastic or colonial interests or imperial traditions, have no relations, and that no European Power "is ready to give up any territory or any advantage it now possesses no matter where it is held or at whose disadvantage," that it was an interest common to all "that, henceforth, the world should be governed by definite principles of justice, and not controlled by private diplomatic bargains;" that the conference at Paris wholly ignored these considerations; and that secret compacts between France, Great Britain, Russia, Italy and Japan, made as late as March, 1917, at the very time China was urged to become an ally and belligerent for the common good, yet bargaining away her undoubted rights among themselves, have been brought to light.

Chapter II deals with "The Un-American Character of the League." Dr. Hill finds the League not only does not accept international law; it deliberately abrogates it. There are to be henceforth no "Neutral rights for which this Republic throughout its history has stood." He finds the Covenant "the work of politicians and not the work of jurists. *They have created an organ of power but not an institution of justice.*" "By this covenant every war becomes a world war." He points out the "Imperial character of this League" and says General Smuts, with Lord Robert Cecil, its principal author, declares expressly that it "is modeled on the British Empire, including its Crown Colonies and Protectorates." He shows how different are the conceptions of liberty in Great Britain and the United States. The British Parliament, restrained by no constitution, governs absolutely millions of men, including whole nations, against their will. America made a revolution to establish the doctrine that liberty is a natural, inherent, personal attribute. He asks, "Why should the League, if

it is to exist, be on the plan of the British Empire and not on the plan of our American ideals." He objects to the sacrifice of our principles by subordinating "the rule of law to a rule of force."

It must be observed that the President took with him to Paris, in his train of 1200 or 1300 international experts (mainly parochial), not one constitutional lawyer of accepted eminence in that branch. He was better served in international law, but was not docile on that subject.

Chapter III deals with "The President's Hostility to the Senate." Dr. Hill says, "Mr. Wilson did not really believe in democracy. When it served him he approved it, but when it denied him what he wanted he tried to outwit it. In temperament he was an imperialist." He finds "no plenipotentiary of any country had ever been accompanied by such an apparatus for the making of peace. Bound by no instructions, restrained by no power of review or recognized control at home, the President was, as he assumed, 'Acting in his own name and by his own proper authority.'" "Constitutionally he had a partner in the solemn process of treaty making 'by and with' whose 'advice and consent' he was required to act." Dr. Hill closes this chapter thus: "The issue presents a conflict between representative and autocratic democracy, *and it is not untimely to be reminded that the Roman Republic was transformed into the Empire by the simple process of conferring all the highest offices upon Caesar.*"

Chapter IV deals with "The Struggle of the Senate for its Prerogative"—which Dr. Hill stoutly maintains, as, it may be added, does the great weight of the highest constitutional authorities, including Mr. Root, Mr. Justice Hughes, Mr. W. D. Guthrie of New York, and Lord Grey of Falloden, to say nothing of the eminent lawyers who are members of the Senate itself.

Chapter V deals with "The Eclipse of Peace through the League." Its closing paragraph is as follows:

The statesmen at Paris were ready in March, 1919, to declare immediate peace, for which the whole world was longing; but since that time there has been projected across the luminary of peace the silhouette of a solitary implacable figure, sternly forbidding the proclamation that the great war is ended, unless it conforms to the mandate of a single will.

Chapter VI is entitled "The Covenant or the Constitution." Dr. Hill says "The evidence all goes to show and new evidence is daily coming to light that at the Peace Conference at Paris the Constitution of the United States was virtually a sealed book both to the Supreme Council and to the American delegation," and to the absolute lack of adequate counsel for that paramount subject we have already alluded.

Chapter VII is entitled "The Nation and the Law," and consists in substance of the admirable address delivered before the American Bar Association at Boston, September 4, 1919, and heretofore fully discussed in this journal in the account of that meeting submitted by this reviewer. It may be pointed out that it quotes, with fine effect, the Declaration of Independence as to the English King, and directs it against another—"he has combined with others to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws, giving his assent to these acts of pretended legislation."

The eighth and last chapter is entitled "The Solemn Referendum." Concerning this, Dr. Hill says:

When, therefore, President Wilson, having personally negotiated a treaty involving a reversal of the traditional policies of the United States, extending far beyond the usual conditions of making peace, and even setting up a mechanism of super-government capable of acting with and upon sovereign states in a manner which subordinates the constitutional powers of Congress, and having failed to obtain the consent of the Senate to its ratification, appeals to the electorate as a means of enforcing acceptance of the treaty, he is proposing a course of action which is extra-constitutional, anti-constitutional and legally futile.

Among the dangers pointed out in this chapter is the fact that "There is not in the entire Treaty of Versailles a single line that prevents the League, which possesses the explicit right of self-amendment, from making any changes its members may think it expedient to make in its powers or its conditions of membership." He points out that the President threatened to throw overboard the whole work accomplished at Paris, unless his colleagues in the Supreme Council would accept his personal dictum as final, yet insists that the Senate should not interpose the slightest modification, and Dr. Hill suggests that it is inconsistent to urge that our sacred honor is pledged to ratify that which he so lightly threatens to throw to the winds. This chapter closes as follows:

Honestly formulated the President's proposal of a "great and solemn referendum" submits the question "Shall the President of the United States alone conclude treaties without the advice and consent of the Senate?" The next step might easily be "Shall the President make laws without the sanction of Congress?"

The pertinence of this is apparent when we reflect that, under our Constitution, treaties are laws of the highest authority, ranking with federal statutes and expressly overriding State constitutions and State laws.

In the epilogue which closes the volume (save for the documents subjoined), Dr. Hill admirably says:

There is in American policy no element of aggression or urgency of unsatisfied claims. In truth—and it is a statement which those who are disposed to criticise the course of the United States may well ponder—the chief question for American policy to decide is how much it shall freely grant to other nations for which it expects nothing in return.

He points out that without the League "the United States would still be free to render any service to the world which this nation may be justly called upon to render."

Dr. Hill's arguments will probably not alter the views of President Wilson, but they are cogent, scholarly and vigorously presented, and constitute a most valuable contribution to the great controversy. The *New York Times Book Review* (September 5), a hostile publication, devotes five columns to them, and prints a humorous cartoon of Dr. Hill and President Wilson bestriding the globe. It says, "It is the familiar Republican argument, but it is stated with a force, clearness and plausibility which do not always characterize that argument. . . . It is the Republican case put as strongly as possible; much more strongly put, of course, than Senator Harding has or can put it."

Dr. Hill's book must take its place as the authoritative and classical state-

ment of rational grounds of opposition to the League and Mr. Wilson's foreign policy. It will win warm support from all who still attach themselves to the foreign policy initiated by Washington, and adhered to by every President until the present incumbent; to all who trust and adhere to the system of checks and balances by which our Constitution safeguards public weal and private liberty; to all who believe that the Declaration of Independence of European control, which was the act of origin for this nation, ought not to be abrogated or substantially impaired; by all who believe that a highly punitive power cannot be the parent of eternal repose; to all who feel that the final surrender of autonomy by this nation cannot be made in return for a minor place in a European committee which shall be world controlling.

It will convince those who feel that the United States, having rescued Europe from an overwhelming danger of its own creation, ought not to be coerced into binding itself in one and the same instrument, to forever protect the independence of Europe and forever surrender its own.

CHARLES NOBLE GREGORY.

Democracy and the Eastern Question. The Problem of the Far East as demonstrated by the Great War, and its relation to the United States of America. By Thomas F. Millard. New York: The Century Co., 1919, pp. ix, 446. \$3.00.

The author of this book is a well known American journalist who has spent many years near the sources of Far Eastern political information. His views are frankly and aggressively anti-Japanese; he regards Japan as an ambitious military power with a government constructed on the Prussian plan and dominated by a political philosophy learned in Germany, with a foreign policy which aims at the complete economic and political control of China and the closing of the "open door."

Mr. Millard may be wrong, but he has no doubts. He believes that Japan is a menace to the peace of the world, and he says so bluntly and backs his assertions with personal testimony and ample quotations from newspapers and public documents. He is certain also that it is the duty of the United States to protect China from the aggressive designs of Japan even to the extent of war.

The book is based on selected facts and is as one-sided as the ordinary argument of an advocate. Criticism is rather disarmed by the prefatory statement that the book "is not non-partisan or an impartial discussion of the subject," and that the author "has not encumbered the book by giving much of the contrary side of events and of the contrary arguments." There is thus an implication that there is another side. Mr. Millard's books on Oriental politics are all valuable, and it is well for the American public to have material to counteract the pro-Japanese propaganda.

The reader's reactions to such a book will be determined by his previous conceptions of the purposes and spirit of Japan's foreign policy. If he has been an exchange professor or a distinguished visitor to Japan and been sub-

jected to official and academic hospitality, he will regard Mr. Millard's book as prejudiced and designed to disturb the friendly relations of the two countries. If his experience has been that of the average American or British business man in the Far East, he will accept the book as stating correctly conditions and tendencies.

The subjects discussed are: The Real Character of Japan, Japan's Policy in the Great War, China and the War, The Corruption of a Nation, China and Economic Imperialism, The Open Door, The Siberian Question, and The Solution. An appendix of 80 pages contains texts and other relevant matter which has not until recently been readily accessible. As the book was written before the Peace Conference completed its work, the Siberian and Shantung questions are, of course, not fully developed.

It is unfortunate that Japan has so conducted her foreign affairs as to forfeit much of the good will of the Western world. Her methods are criticized and condemned by practically every recent British and American writer on Far Eastern affairs. There must be some reason for this almost universal condemnation. It cannot be entirely without justification. The American people generally, while always ready to assume the worst of European monarchies, feel kindly toward Japan. They have always been rather proud of their country's part in forcing Japan on to the international stage. During her war with Russia the bravery and heroism of her soldiers were idealized and her Bushido philosophy was contrasted favorably with American materialism. They were indeed "a wonderful little people." After the Treaty of Portsmouth a different note began to be heard. Possibly there was another side to the shield. The cherry-blossom and chrysanthemum conception of Japan was shaken by the new foreign policy, and it finally dawned on Europe and America that there had arisen in the East a powerful military empire with definite political and economic ambitions and a will to realize them by methods learned in Germany.

The old relations between the United States and Japan came to an end with the Treaty of Portsmouth. The Japanese public believed that they had won a great victory and that Russia would be enforced to pay the expenses of the war. Although victorious in the field, Japan was, in fact, on the verge of defeat. Witte understood the situation and Komura knew that a renewal of the war meant ultimate disaster for Japan. On the advice of President Roosevelt, an indemnity was waived and Komura returned to face a Tokio mob and inaugurate the foreign policy which has since been consistently followed. Its object is beyond question the domination of the Far East through the economic and political control of China and the consolidation of the yellow races under the leadership of Japan. To this everything has been subordinated.

Mr. Millard makes it very clear that the United States has never had a definite policy in the East. Her influence has been negative rather than positive, and no one ever believed that she would back her protestations with force. However, her record is free from aggressive acts. She has joined with the other Powers in diplomatic pressure on China for equal treatment and commercial advantages. When the use of force became necessary, she always virtuously withdrew until the "outrage" was consummated and then coolly demanded

her share of trade to the disgust of those who had borne the brunt of the battle.

The Manchurian neutralization suggestion was treated with scant respect. President Taft's administration supported American bankers in their demand to participate in Chinese loans. Russia and Japan, neither with any money to loan, edged into the combination. But after the inauguration of President Wilson, diplomatic support was withdrawn and America became again merely an interested spectator. The recent change of policy and America's participation in the new consortium encourages one to believe that the United States will have a serious part in the rehabilitation of China. There is no doubt but that Japan somewhat arrogantly resents this American activity. Millard shows that whenever brought face to face with Japan in the East, American diplomacy has failed. What will the future bring forth?

He finds no "democracy" in the Mikado's empire and no hope of there being any so long as the Japanese worship the head of the state as a divine being and submit to the leadership of a military caste. Japan's diplomatic strategy is directed to the control of China. Every major move so far made by her seems to have been successful; every demand on China has been granted or withdrawn to be resubmitted on a favorable occasion. By the Lansing-Ishii agreement, Japan secured recognition of her "special interests" in China. Her diplomacy is definite, positive and backed by force. According to Mr. Millard, the United States must abandon the Orient or fight for a position of equality. The reader will find all the arguments in favor of that view of the situation in this book.

CHARLES BURKE ELLIOTT.

The League of Nations. By the Rt. Hon. Sir Frederick Pollock, Bt. London: Stevens & Sons, 1920, pp. xv, 251.

The first four chapters of this volume treat respectively of "The Older European Order," "Methods of International Arbitration," "The Hague Tribunal," and "The League in Sight." The four remaining chapters consist of a commentary on the Covenant of the League, article by article. There is an appendix containing the draft of February, 1919, the text of the Covenant as finally adopted, the official commentary, and several other documents bearing on the subject.

Anything on the League of Nations from so eminent a jurist as Sir Frederick Pollock is worthy of attention. It should be said at the outset that he is in full sympathy with the League of Nations. He traces the origin of the movement for a League from the first organization of the American League to Enforce Peace, for which he gives credit to Ex-President Taft and Mr. Theodore Marburg, to the failure of the last German offensive in the autumn of 1918, when, he says, "it was clear that the speculative stage of the great problem was already past," and the only question was whether the League should be a part of the Treaty of Peace or reserved for future consideration. The plan of the American Government, he says, prevailed when the terms of the armistice

were agreed upon. He says in this connection that "If no one had thought of the League of Nations before, it would none the less have been needful, about the end of 1918, to invent something of the kind." The author says that General Smuts' pamphlet was the most important single contribution made to the constitution of the League, and that this was probably due to the fact that he had the advantage of knowing a great deal more than any previous writer about the discussions that had already taken place on the subject between the Allies.

The commentary on the various articles of the League is sympathetic and clarifying. On Article X, which has been made the bone of contention in this country, he calls attention to the fact that the words "as against external aggression" are of the first importance, and afford no ground for the fear that the League will be used as a Holy Alliance to suppress national or other movements within the boundaries of the member States. Commenting on the rest of Article X, he says:

In the second sentence the words are "the Council shall *advise*"—not prescribe. They are plain enough, but there is a disposition in some quarters to ignore them. Some Americans are afraid of the United States being compelled under this article to do police work in Europe or Asia, which may be foreign to American interests. They forget that the United States has a permanent place and vote in the Council, that nothing can be done without the unanimous advice of the Council, and that even then the Council has no compulsory power. We have even seen an apprehension expressed that Canada might be called upon to join in operations against Great Britain. Such fears are, to speak frankly, midsummer madness. Still less is there any interference with any constitutional provision in any member State requiring the consent of the legislature to a declaration of war.

Sir Frederick Pollock is a staunch advocate of the establishment of an International Court of Justice. He says: "The League stands for peace among nations assured by justice. But there can be no settled justice without judgment and no judgment without a tribunal." He concurs, however, in the wisdom of Article XIV, which did not undertake the immediate organization of a court, but directed the Council to submit plans for its establishment. Referring to the provision that the court may give an advisory opinion upon any question referred to it by the Council or by the Assembly, he says: "There is European precedent in the statutory authority of the Judicial Committee of the Privy Council to advise the Crown on questions officially referred to it." He calls attention to the fact that American courts have held that it is beyond their competence, in the absence of special constitutional provision, to give advice to executive authorities.

The volume, as a whole, is a valuable contribution to the subject, and should be of particular interest to Americans who are interested in jurisprudence and political science.

JOHN H. LATANÉ.

Das Völkerrechtliche Delikt. By Dr. Karl Strupp. V. III, part 1a of *Handbuch des Völkerrechts*, edited by Professor Fritz Stier-Somlo. Berlin: W. Kohlhammer, 1920. Pp. 223.

This is a scholarly work of first rank. It deals with the international responsibility or legal liability of the state for torts committed by authorities of the state upon aliens or foreign states. This subject, although of primary importance in the theory and practice of international law, is almost neglected by the writers of general treatises on international law; it is discussed by certain specialists in monographs, of which that by Triepel (1899) was the first of note. This neglect is the more surprising in that the subject makes a peculiar appeal to the lawyer, involving the relation between international law and municipal law, the principles of agency in the relation between the state and its officers and organs of government, the legal status of aliens, due process of law in the concept "denial of justice," and the subjects of damages and means of redress.

The present work constitutes an analytical and critical discussion of state liability for tort, including in its source material the theories of jurists and writers, the decisions of international tribunals, and the practice of states. It is strictly legal in character and evidences not only a mastery of the data of the subject, but a profound analytical mind to be welcomed in the field of international law. The work is perhaps, like Anzilotti's and Triepel's, more important for the theorist in the subject than for the practitioner, although ample citations of cases, made available by previous research, are not lacking. It is on the theoretical side that contributions were needed by the profession, and the author has met the need satisfactorily. The book, he says, was for the most part written before the war, although it has but just been published (1920).

The book is divided into four main parts: (1) The international tort in general, including the theories of liability with and without fault; (2) state responsibility in particular types of cases and for particular classes of agents; (3) factors limiting the conception of wrongdoing in acts inflicting injury on other states, embracing (a) an exhaustive discussion of the history, theory and practice of acts justified under the guise of self-preservation or "law of necessity," and (b) a brief discussion of the subject of reprisals in international law; and (4) the consequences of international tort and the method of obtaining reparation.

It is of course a fact that there are but few positive rules of international law of universal application. But the author builds his study on the maxim *pacta sunt servanda* as the measure of international duty and the test of liability, including the rules binding upon a group of states or individual states, whether based on treaty or custom. He examines the various theories of liability, such as Anzilotti's, who does not believe that injury is necessary, in addition to violation of law, as a foundation of state liability—which most authorities maintain—but predicates liability on the mere violation of international law, whether resulting in injury or not. That raises the question whether all states, including the one directly affected, may not claim reparation for breach of a rule of international law, analogous to municipal theories of criminal law.

Dr. Strupp criticizes Oppenheim's distinction between the direct responsi-

bility of the state for its own agents and the so-called indirect responsibility for the acts of private individuals. He shows, correctly, we believe, that mere failure on the part of the state to prevent or punish the injury to the alien is not participation in the wrong, but an independent ground of liability. It is liable for its failure to perform an international duty, not for the injury inflicted by the private individual, between whom and the state there is no privity.

Again, he criticizes sharply the many arbitral awards and the supporting opinion of writers making a distinction between the liability of the state for acts of superior and of inferior officials. As a rule, only acts of the former have been deemed to express the state will, those of the latter (unless ratified or unreprieved) being deemed merely unauthorized private torts upon aliens, which, if corrected and rebuked by superior officers, have been held to relieve the state from international liability. The author applies this same criticism throughout to the various classes of state agents—inferior judges, soldiers whether under command of officers or not, and administrative authorities. He regards the distinction as illegal; he asserts that the suppression or removal of the effects of the tort by superior officers still leaves it a tort from the moment of commission by the inferior officer. This is the view also that seems to have been taken by President Wilson when he deemed the alleged insult to our flag at Tampico by two subordinate officers of Mexico a ground for international hostility against the Mexican national Government. It is not, however, the view entertained by most arbitral tribunals, nor by most Foreign Offices, which in this respect would accord the alien no greater claims to redress than the citizen, even in countries where the citizen can sue. The author's view, while more strictly legal than is the actual practice, would impose upon the state a greater measure of guaranty to aliens for the efficient operation of all parts of its state machinery than international practice has yet recognized. The author admits that the minor official must, as a condition of invoking state liability, have been acting within the scope of his authority, but does not satisfactorily dispose of the question whether a tort committed by him upon an individual could ever be deemed within the scope of his authority. It is on this point that some of the cases denying state liability actually turn.

Dr. Strupp also expresses vigorous dissent from a modern theory sustaining state liability for the acts of successful revolutionists from the beginning of the revolution, on the theory that "the revolution represents *ab initio* a changing national will, crystallizing in the final successful result." See *Bolivar Railway Co. v. Venezuela*, February 17, 1903 (Ralston, 394). He claims, with some merit, that this is inconsistent with the theory that the state is also liable for the acts of the titular government up to the time it is displaced, and asserts that there cannot at the same time be two organs representing the state. He claims that a date line must be drawn at which the old government terminates, and the new government begins, its representative character. He disputes sharply the writer's criticism of the Didier decision before the Chilean-American arbitral tribunal of 1892, in which the commission dismissed a claim against Chile for goods supplied to the successful revolutionary party of Gen. Carrera in 1816, on the ground that Chile was not recognized by the United States until 1822.

However responsive to exact legal theory the author's view may be, it must be recalled that the professed state acts of the two alleged organs operate in different spheres, and that, more important, rules of expediency have weighty influence upon the law and have dictated the established practice of holding states liable for wrongful acts—no distinction need be made between torts and breaches of contract—of successful revolutionists. The author admits the existence of the custom, but finds it illegal.

His discussion of fault as an essential element of state liability is doubtless the best yet published. He does not go so far as Anzilotti in limiting the necessity of chargeable fault. He would confine the necessity of showing fault merely to cases where there has been an *omission* of proper state action imposing liability, and he cites Serbia's condonation of the Slav efforts to encompass the severance of Slav provinces from Austria. In cases of positive acts of commission causing injury to other states, directly or through their citizens, he deems proof of fault to be unnecessary. This was not Secretary of State Bayard's view. Where international law imposes a specific duty, the author believes failure to perform it, regardless of fault, a sufficient ground of liability. Nor does he believe absence of ability to prevent an injury a sufficient defense, holding that its absence must be satisfactorily explained.

The term "denial of justice" is analyzed and the practice criticized. It may well be. The unilateral determination of the existence of a "denial of justice" and the unrestrained employment of self-help to enforce the conclusion thus reached, militates against the strict concurrence of legal theory with actual practice. The author renders useful service in distinguishing the unjust judgment from the denial of justice, and in endeavoring to substitute accuracy for vagueness in the connotation of the latter term. Unfortunately the cases do not sustain the scientific limitations of the term, and writers must take account of the unscientific practice.

The "law of necessity" as a concept of international law occupies about a third of the work. In the author's view, necessity is considered as a limitation upon otherwise tortious acts. He discusses critically the many cases in practice justified under this head or under the head of self-preservation, notably Canning's justification for the occupation of the neutral island of Madeira, 1801, Castlereagh's notes, the *Caroline* case in 1842, the *Zamora* decision, and Germany's invasion of Belgium. The plausibility of the legal argument raises doubts as to the practical possibility of convincing the scientific German mind on this last case, although the author is as objective as can be expected. His discussion of the principle *rebus sic stantibus*, on which he justifies the Bolshevik attitude toward the Treaty of Brest-Litovsk, raises the question—not asserted, however—whether Germany might not seek to advance the same principle with respect to the Treaty of Versailles, as time elapses. As a study of the concept of "necessity" in international law, the reviewer knows of no work to equal this.

The author has produced a work certain to take its place among the most thoughtful of the contributions to a difficult topic of international law, the practical and scientific importance of which is not generally appreciated.

EDWIN M. BORCHARD.

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TREATY OF PEACE BETWEEN THE ALLIED AND ASSOCIATED POWERS AND HUNGARY, AND PROTOCOL AND DECLARATION.¹

Signed at Trianon, June 4, 1920.

THE UNITED STATES OF AMERICA, THE BRITISH EMPIRE, FRANCE, ITALY and JAPAN,

These Powers being described in the present treaty as the Principal Allied and Associated Powers,

BELGIUM, CHINA, CUBA, GREECE, NICARAGUA, PANAMA, POLAND, PORTUGAL, ROUMANIA, THE SERB-CROAT-SLOVENE STATE, SIAM, and CZECHO-SLOVAKIA,

These Powers constituting with the Principal Powers mentioned above the Allied and Associated Powers,

of the one part;

And HUNGARY,

of the other part;

Whereas on the request of the former Imperial and Royal Austro-Hungarian Government an armistice was granted to Austria-Hungary on November 3, 1918, by the Principal Allied and Associated Powers, and completed as regards Hungary by the military convention of November 13, 1918, in order that a Treaty of Peace might be concluded, and

Whereas the Allied and Associated Powers are equally desirous that the war in which certain among them were successively involved, directly or indirectly, against Austria-Hungary, and which originated in the declaration of war by the former Imperial and Royal Austro-Hungarian Government on July 28, 1914, against Serbia, and in the hostilities conducted by Germany in alliance with Austria-Hungary, should be replaced by a firm, just, and durable peace, and

Whereas the former Austro-Hungarian Monarchy has now ceased to exist, and has been replaced in Hungary by a national Hungarian Government:

For this purpose the High Contracting Parties have appointed as their plenipotentiaries:

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

Mr. Hugh Campbell WALLACE, Ambassador Extraordinary and Plenipotentiary of the United States of America at Paris;

¹ British Treaty Series No. 10 (1920). The map which accompanies the treaty is too large and detailed for reproduction in this SUPPLEMENT.

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND
AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

The Right Honorable Edward George VILLIERS, Earl of DERBY, K.G., P.C.,
K.C.V.O., C.B., Ambassador Extraordinary and Plenipotentiary of His
Britannic Majesty at Paris;

And

for the DOMINION OF CANADA:

The Honorable Sir George Halsey PERLEY, K.C.M.G., High Commissioner
for Canada in the United Kingdom;

for the COMMONWEALTH OF AUSTRALIA:

The Right Honorable Andrew FISHER, High Commissioner for Australia
in the United Kingdom;

for the DOMINION OF NEW ZEALAND:

The Honorable Sir Thomas MACKENZIE, K.C.M.G., High Commissioner for
New Zealand in the United Kingdom;

for the UNION OF SOUTH AFRICA:

Mr. Reginald Andrew BLANKENBERG, O.B.E., Acting High Commissioner
for the Union of South Africa in the United Kingdom;

for INDIA:

The Right Honorable Edward George VILLIERS, Earl of DERBY, K.G., P.C.,
K.C.V.O., C.B., Ambassador Extraordinary and Plenipotentiary of His
Britannic Majesty at Paris;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr. Alexandre MILLERAND, President of the Council, Minister for Foreign
Affairs;

Mr. Frederic FRANÇOIS-MARSAL, Minister of Finance;

Mr. Auguste Paul-Louis ISAAC, Minister of Commerce and Industry;

Mr. Jules CAMBON, Ambassador of France;

Mr. Georges Maurice PALÉOLOGUE, Ambassador of France, Secretary-General
of the Ministry for Foreign Affairs;

HIS MAJESTY THE KING OF ITALY:

Count Lelio BONIN LONGARE, Senator of the Kingdom, Ambassador Extraor-
dinary and Plenipotentiary of H.M. the King of Italy at Paris;
Rear-Admiral Mario GRASSI;

HIS MAJESTY THE EMPEROR OF JAPAN:

Mr. K. MATSUI, Ambassador Extraordinary and Plenipotentiary of H.M.
the Emperor of Japan at Paris;

HIS MAJESTY THE KING OF THE BELGIANS:

Mr. Jules VAN DEN HEUVEL, Envoy Extraordinary and Minister Plenipoten-
tiary, Minister of State;

Mr. Rolin JAEQUEMYNS, Member of the Institute of Private International
Law, Secretary General of the Belgian Delegation;

THE PRESIDENT OF THE CHINESE REPUBLIC:

Mr. Vikyuin Wellington Koo;
Mr. Sao-Ke Alfred SZE;

THE PRESIDENT OF THE CUBAN REPUBLIC:

Dr. Rafael Martinez ORTIZ, Envoy Extraordinary and Minister Plenipotentiary of the Cuban Republic at Paris;

HIS MAJESTY THE KING OF THE HELLENES:

Mr. Athos ROMANOS, Envoy Extraordinary and Minister Plenipotentiary of H.M. the King of the Hellenes at Paris;

THE PRESIDENT OF THE REPUBLIC OF NICARAGUA:

Mr. Carlos A. VILLANUEVA, Chargé d'Affaires of the Republic of Nicaragua at Paris;

THE PRESIDENT OF THE REPUBLIC OF PANAMA:

Mr. Raoul A. AMADOR, Chargé d'Affaires of the Republic of Panama at Paris;

THE PRESIDENT OF THE POLISH REPUBLIC:

Prince Eustache SAPIEHA, Envoy Extraordinary and Minister Plenipotentiary of the Polish Republic at London;
Mr. Erasme PILTZ, Envoy Extraordinary and Minister Plenipotentiary of the Polish Republic at Prague;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Dr. Affonso da COSTA, formerly President of the Council of Ministers;
Mr. João CHAGAS, Envoy Extraordinary and Minister Plenipotentiary of the Portuguese Republic at Paris;

HIS MAJESTY THE KING OF ROUMANIA:

Dr. Jon CANTACUZINO, Minister of State;
Mr. Nicolae TITULESCU, formerly Minister Secretary of State;

HIS MAJESTY THE KING OF THE SERBS, THE CROATS, AND THE SLOVENES:

Mr. Nicolas P. PACHITCH, formerly President of the Council of Ministers;
Mr. Ante TRUMBIČ, Minister for Foreign Affairs;
Mr. Ivan ZOLGER, Doctor of Law;

HIS MAJESTY THE KING OF SIAM:

His Highness Prince CHAROON, Envoy Extraordinary and Minister Plenipotentiary of H.M. the King of Siam at Paris;

THE PRESIDENT OF THE CZECHO-SLOVAK REPUBLIC:

Mr. Edward BENES, Minister for Foreign Affairs;
Mr. Stephen OSUSKY, Envoy Extraordinary and Minister Plenipotentiary of the Czecho-Slovak Republic at London;

HUNGARY:

Mr. Gaston de BÉNARD, Minister of Labor and Public Welfare;

Mr. Alfred DRASCHE-LAZAR de Thorda, Envoy Extraordinary and Minister Plenipotentiary;

Who, having communicated their full powers found in good and due form, have agreed as follows:

From the coming into force of the present treaty the state of war will terminate.

From that moment and subject to the provisions of the present treaty official relations will exist between the Allied and Associated Powers and Hungary.

PART I.—THE COVENANT OF THE LEAGUE OF NATIONS.

The High Contracting Parties,

In order to promote international coöperation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honorable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and

by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this covenant of the League of Nations.

ARTICLE 1.

The original members of the League of Nations shall be those of the signatories which are named in the annex to this Covenant and also such of those other States named in the annex as shall accede without reservation to this Covenant. Such accession shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ARTICLE 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

ARTICLE 3.

The Assembly shall consist of representatives of the members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each member of the League shall have one vote, and may have not more than three representatives.

ARTICLE 4.

The Council shall consist of representatives of the Principal Allied and Associated Powers, together with representatives of four other members of the League. These four members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the representatives of the four members of the League first selected by the assembly, representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional members of the League whose representatives shall always be members of the Council; the Council with like approval may increase the number of members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any member of the League not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that member of the League.

At meetings of the Council, each member of the League represented on the Council shall have one vote, and may have not more than one representative.

ARTICLE 5.

Except where otherwise expressly provided in this Covenant or by the terms of the present treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE 6.

The permanent Secretariat shall be established at the seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 7.

The seat of the League is established at Geneva.

The Council may at any time decide that the seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by representatives attending its meetings shall be inviolable.

ARTICLE 8.

The members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programs and the condition of such of their industries as are adaptable to war-like purposes.

ARTICLE 9.

A permanent commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

ARTICLE 10.

The members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11.

Any war or threat of war, whether immediately affecting any of the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall on the request of any member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE 12.

The members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE 13.

The members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute

a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE 14.

The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE 15.

If there should arise between members of the League any dispute likely to lead to a rupture which is not submitted to arbitration in accordance with Article 13, the members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavor to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council, either unanimously, or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute, the members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties

to the dispute, the members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the representatives of those members of the League represented on the Council and of a majority of the other members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the representatives of one or more of the parties to the dispute.

ARTICLE 16.

Should any member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the members of the League which are coöperating to protect the covenants of the League.

Any member of the League which has violated any covenant of the League may be declared to be no longer a member of the League by a vote of the Council concurred in by the representatives of all the other members of the League represented thereon.

ARTICLE 17.

In the event of a dispute between a member of the League and a State which is not a member of the League, or between States not members of the League, the State or States not members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

ARTICLE 18.

Every treaty or international engagement entered into hereafter by any member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

ARTICLE 19.

The Assembly may from time to time advise the reconsideration by members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

ARTICLE 20.

The members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any member of the League shall, before becoming a member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such member to take immediate steps to procure its release from such obligations.

ARTICLE 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.

ARTICLE 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them, and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility and who are willing to accept it, and that this tutelage should be exercised by them as mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave-trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the mandatory, and other circumstances, can be best administered under the laws of the mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the mandatory shall, if not previously agreed upon by the members of the League, be explicitly defined in each case by the Council.

A permanent commission shall be constituted to receive and examine the

annual reports of the mandatories and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the members of the League:

- (a) will endeavor to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;
- (b) undertake to secure just treatment of the native inhabitants of territories under their control;
- (c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;
- (d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;
- (e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;
- (f) will endeavor to take steps in matters of international concern for the prevention and control of disease.

ARTICLE 24.

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE 25.

The members of the League agree to encourage and promote the establishment and coöperation of duly authorized voluntary national Red Cross organi-

zations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

ARTICLE 26.

Amendments to this Covenant will take effect when ratified by the members of the League whose representatives compose the Council and by a majority of the members of the League whose representatives compose the Assembly.

No such amendment shall bind any member of the League which signifies its dissent therefrom, but in that case it shall cease to be a member of the League.

ANNEX.

I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS.

UNITED STATES OF AMERICA.	HAITI.
BELGIUM.	HEDJAZ.
BOLIVIA.	HONDURAS.
BRAZIL.	ITALY.
BRITISH EMPIRE.	JAPAN.
CANADA.	LIBERIA.
AUSTRALIA.	NICARAGUA.
SOUTH AFRICA.	PANAMA.
NEW ZEALAND.	PERU.
INDIA.	POLAND.
CHINA.	PORTUGAL.
CUBA.	ROUMANIA.
ECUADOR.	SERB-CROAT-SLOVENE STATE.
FRANCE.	SIAM.
GREECE.	CZECHO-SLOVAKIA.
GUATEMALA.	URUGUAY.

States Invited to Accede to the Covenant.

ARGENTINE REPUBLIC.	PERSIA.
CHILI.	SALVADOR.
COLOMBIA.	SPAIN.
DENMARK.	SWEDEN.
NETHERLANDS.	SWITZERLAND.
NORWAY.	VENEZUELA.
PARAGUAY.	

II. FIRST SECRETARY-GENERAL OF THE LEAGUE OF NATIONS.

The Honorable Sir James Eric DRUMMOND, K.C.M.G., C.B.

PART II.—FRONTIERS OF HUNGARY.

ARTICLE 27.

The frontiers of Hungary shall be fixed as follows (see annexed map):²

1. *With Austria:*

From the point common to the three frontiers of Austria, Hungary and Czecho-Slovakia, this point to be selected on the ground about 1 kilometre west of Antonienhof (east of Kittsee), southwards to point 115 situated about 8 kilometres south-west of St. Johann,

a line to be fixed on the ground, leaving entirely in Hungarian territory the Karburg-Csorna railway and passing west of Kr. Jahrndorf and Wüst-Sommerein, and east of Kittsee, D. Jahrndorf, Nickelsdorf and Andau;

thence westwards to a point to be selected on the southern shore of Neusiedler See between Holling and Hidegseg,

a line to be fixed on the ground passing south of Pamhagen, leaving in Hungarian territory the entire Einer canal as well as the branch railway running north-westwards from the station of Mexiko, and then crossing Neusiedler See keeping to the south of the island containing point 117;

thence southwards to point 265 (Kamenje) about 2 kilometres south-east of Nikitsch,

a line to be fixed on the ground passing east of Zinkendorf and Nikitsch and west of Nemet Peresztég and Kövesd;

thence south-westwards to point 883 (Trott Kö) about 9 kilometres south-west of Köszeg,

a line to be fixed on the ground passing south-east of Locsmand, Olmod and Liebing, and north-west of Köszeg and the road from Köszeg to Salamonfa;

thence southwards to point 234 about 7 kilometres north-north-east of Pinkamindszent,

a line to be fixed on the ground passing east of Rohonez and Nagynarda and west of Butsching and Dozmat, then through points 273, 260 and 241;

thence in a general south-westerly direction to point 353 about 6 kilometres north-north-east of Szt Gotthard,

a line to be fixed on the ground passing between Nagysaroslak and Pinkamindszent, then south of Karacsfa, Nemetbükkös and Zsamand and through point 323 (Hochkogel);

thence south-westwards to a point to be selected on the watershed between the basins of the Raba (Raab) and the Mur about 2 kilometres east of Toka, this point being the point common to the three frontiers of Austria, Hungary and the Serb-Croat-Slovene State,

a line to be fixed on the ground passing east of Rabakeresztur, Nemetlak and Jagyfalva, west of the Radkersburg-Szt Gotthard road and through point 353 (Janke B.).

² Map omitted from this SUPPLEMENT.

2. *With the Serb-Croat-Slovene State:*

From the point defined above in an easterly direction to point 313 about 10 kilometres south of Szt Gotthard,

a line to be fixed on the ground following generally the watershed between the basins of the Raba on the north and of the Mur on the south;

thence in a southerly direction to point 295 about 16 kilometres north-east of Muraszombat,

a line to be fixed on the ground passing east of Nagydolany, Orihodos with its railway station, Kapornak, Domonkosfa and Kisszerdahely, and west of Kotormany and Szomorocz, and through points 319 and 291;

thence in a south-easterly direction to point 209 about 3 kilometres west of Nemesnep,

a line to be fixed on the ground following generally the watershed between the Nemesnepi on the north and the Kebele on the south;

thence in a south-south-easterly direction to a point to be chosen on the Lendva south of point 265,

a line to be fixed on the ground passing to the east of Kebeleszentmarton, Zsitkőcz, Gönterhaza, Hidveg, Csente, Pincze and to the west of Lendva-jakabfa, Bödehaza, Gaborjanhaza, Dedes, Lendva-Ujfalu;

thence in a south-easterly direction,
the course of the Lendva downstream;

then the course of the Mur downstream;

then to its junction with the old boundary between Hungary and Croatia-Slavonia, about $1\frac{1}{2}$ kilometres above the Gyekenyes-Koproncza railway bridge,
the course of the Drau (Drave) downstream;

thence south-eastwards to a point to be chosen about 9 kilometres east of Miholjacdolnji,

the old administrative boundary between Hungary and Croatia-Slavonia, modified, however, so as to leave the Gyekenyes-Barcs railway, together with the station of Gola, entirely in Hungarian territory;

thence in an easterly direction to point 93 about 3 kilometres south-west of Baranyavar,

a line to be fixed on the ground passing north of Torjancz, Löcs and Benge and south of Kassad, Beremend with its railway station and Illocska;

thence in a north-easterly direction to a point to be chosen in the course of the Danube about 8 kilometres north of point 169 (Kisköszeg),

a line to be fixed on the ground passing to the west of Baranyavar, Főherczeg-lak (leaving to the Serb-Croat-Slovene State the railway joining these two places at the junction immediately to the north of Baranyavar) and Dalyok, and to the east of Ivan-Darda, Sarok, Udvar and Izabellaföld (with its railway);

thence east-north-eastwards to a point in the course of the Kigyos about 3 kilometres east-south-east of Bacsma-daras Station,

a line to be fixed on the ground passing between Herczegszanto and Bereg, and then approximately following the course of the Kigyos, but curving to the north of Rigyicza;

thence east-north-eastwards to a point to be selected on the backwater of the Tisza (Theiss) about $5\frac{1}{2}$ kilometres east-north-east of Horgos Station,

a line to be fixed on the ground passing south of Kun-Baja, cutting the Szabadka-Bácsalmás railway about $11\frac{1}{2}$ kilometres east of Csikéria Station, cutting the Szabadka-Kiskunhalas railway about 3 kilometres south of Kelebia Station, and passing north of Horgos and its station, and south of Röskszent-mihálytelek:

thence in a south-easterly direction to the Tisza,
the median line of the backwater;

thence to a point to be selected about 5 kilometres upstream,
the course of the Tisza;

thence in a general easterly direction to a point to be selected on the ground about 4 kilometres south-west of Kiszombor Station, approximately east-south-east of point 84 and south-south-west of point 83, this point being the point common to the three frontiers of Roumania, Hungary, and the Serb-Croat-Slovene State,

a line to be fixed on the ground passing between Gyala and Oszentivan and between Obeb and Kübekhaza.

3. *With Roumania:*

From the point defined above east-north-eastwards to a point to be selected on the Maros about $31\frac{1}{2}$ kilometres upstream from the railway bridge between Mako and Szeged,

a line to be fixed on the ground;

thence south-eastwards, and then north-eastwards to a point to be selected about 1 kilometre south of Nagylak station,
the course of the river Maros upstream;

thence north-eastwards to the salient of the administrative boundary between the *comitats* of Csanad and Arad north-north-west of Nemetpereg,

a line to be fixed on the ground passing between Nagylak and the railway station;

thence east-north-eastwards to a point to be selected on the ground between Battonya and Torna,

this administrative boundary, passing north of Nemetpereg and Kispereg;

thence to point 123 (about 1.2 kilometres east of Magosliget), the point common to the three frontiers of Hungary, Roumania and Czecho-Slovakia (Ruthenian territory),

a line to be fixed on the ground passing west of Nagyvarjas, Kisvarjas and Nagyiratos, east of Dombegyhaz, Kevermes and Elek, west of Ottlaka, Nagy-Pel, Gyula-Varsand, Ant and Illye, east of Gyula, Gyula-Vari and Kötégany, cutting

the Nagyszalonta-Gyula railway about 12 kilometres south-west of Nagyszalonta and between the two bifurcations formed by the crossing of this line and the Szeghalom-Erdőgyarak railway; passing east of Mehkerek, west of Nagyszalonta and Marczihaza, east of Geszt, west of Atyas, Olah-Szt-Miklos and Rojt, east of Ugra and Harsany, west of Körösszeg and Köros-Tarjan, east of Szakal and Berek-Böszörmeny, west of Bors, east of Artand, west of Nagy-Szanto, east of Nagy-Kereki, west of Pelbarthida and Bihardioszeg, east of Kis-Marja, west of Csokaly, east of Nagyleta and Almosd, west of Er-Selind, east of Bagamer, west of Er-Kenez and Ermi-halyfalva, east of Szt-György-Abrany and Peneszlek, west of Szaniszló, Bere-Csomaköz, Feny, Csanalos, Börvely and Domahida, east of Vallaj, west of Csenger-Bagos and Ovari, east of Csenger-Ujfalú, west of Dara, east of Csenger and Komlód-Totfalú, west of Pete, east of Nagy-Gecz, west of Szaraz-Berek, east of Mehtelek, Garbold and Nagy-Hodos, west of Fertös-Almas, east of Kis-Hodos, west of Nagy-Palad, east of Kis-Palad and Magosliget.

4. *With Czecho-Slovakia:*

From point 123 described above north-westwards to a point to be selected on the course of the Batar about 1 kilometre east of Magosliget,
a line to be fixed on the ground;

thence the course of the Batar downstream;

then to a point to be selected on it below Badalo and near this village,
the course of the Tisza downstream;

thence north-north-westwards to a point to be selected on the ground north-east of Darocz,

a line to be fixed on the ground leaving in the Ruthenian territory of Czecho-Slovakia Badalo, Csoma, Macsola, Asztely and Deda, and in Hungarian territory Bereg-Surany and Darocz;

thence north-westwards to the confluence of the Fekete-Viz and the Csaronda,

a line to be fixed on the ground passing through point 179, leaving in Ruthenian territory Mező Kaszony, Lonyay Tn., Degenfeld Tn., Heteny, Horvathi Tn., Komjathy Tn., and in Hungarian territory Kerek Gorond Tn., Berki Tn. and Barabas;

thence to a point to be selected in its course above the administrative boundary between the *comitats* of Szabolcs and Bereg,
the course of the Csaronda downstream;

thence westwards to the point where the above-mentioned boundary coming from the right bank cuts the course of the Tisza,

a line to be fixed on the ground;

thence to a point to be selected on the ground east-south-east of Tarkany,
the course of the Tisza downstream;

thence approximately westwards to a point in the Ronyva about 3.7 kilometres north of the bridge between the town and the station of Satoralja-Ujhely,

a line to be fixed on the ground leaving to Czecho-Slovakia Tarkany, Perbenyik, Orös, Kis-Kövesd, Bodrog-Szerdahely, Bodróg-Szog, and Borsi, and to Hungary Damoc, Laca, Rozvagy, Pacin, Karos, Felső-Berecki, crossing the Bodrog and cutting the railway triangle south-east of Satoralja-Ujhely, passing east of this town so as to leave the Kassa-Csap railway entirely in Czecho-Slovak territory;

thence to a point near point 125 about $1\frac{1}{2}$ kilometres south of Alsomihalyi, the course of the Ronyva upstream;

thence north-westwards to a point on the Hernad opposite point 167 on the right bank south-west of Abaujnadasd,

a line to be fixed on the ground following approximately the watershed between the basins of the Ronyva on the east and the Bozsva on the west, but passing about 2 kilometres east of Pusztafalu, turning south-westwards at point 896, cutting at point 424 the Kassa-Satoralja road and passing south of Abaujnadasd;

thence to a point to be selected on the ground about $1\frac{1}{2}$ kilometres south-west of Abaujvar,

the course of the Hernad downstream;

thence westwards to point 330 about $1\frac{1}{2}$ kilometres south-south-west of Pereny,

a line to be fixed on the ground leaving to Czecho-Slovakia the villages of Miglecznemeti and Pereny, and to Hungary the village of Tornyosnemeti;

thence westwards to point 291 about $3\frac{1}{2}$ kilometres south-east of Janok,

the watershed between the basins of the Bodva on the north and the Rakacza on the south, but leaving in Hungarian territory the road on the crest south-east of Buzita;

thence west-north-westwards to point 431 about 3 kilometres south-west of Torna,

a line to be fixed on the ground leaving to Czecho-Slovakia Janok, Torna-horvati and Bodvavendegi, and to Hungary Tornaszentjakab and Hidvegardo;

thence south-westwards to point 365 about 12 kilometres south-south-east of Pelsöcz,

a line to be fixed on the ground passing through points 601, 381 (on the Rozsnyo-Edeleny road), 557 and 502;

thence south-south-westwards to point 305 about 7 kilometres north-west of Putnok,

the watershed between the basins of the Sajó on the west and the Szuha and Kélemeri on the east;

thence south-south-westwards to point 278 south of the confluence of the Sajó and the Rima,

a line to be fixed on the ground, leaving Banreve station to Hungary while permitting, if required, the construction in Czecho-Slovak territory of a connection between the Pelsöcz and Losonc railway lines;

thence south-westwards to point 485 about 10 kilometres east-north-east of Salgotarjan,

a line to be fixed on the ground following approximately the watershed between the basins of the Rima to the north and the Hangony and Tarna rivers to the south;

thence west-north-westwards to point 727,

a line to be fixed on the ground leaving to Hungary the villages and mines of Zagyva-Rona and Salgo, and passing south of Somos-Ujfalú station;

thence north-westwards to point 391 about 7 kilometres east of Litke,

a line following approximately the crest bounding on the north-east the basin of the Dobroda and passing through point 446;

thence north-westwards to a point to be selected on the course of the Eipel (Ipoly) about 11½ kilometres north-east of Tarnocz,

a line to be fixed on the ground passing through point 312 and between Tarnocz and Kalonda;

thence south-westwards to a point to be selected in the bend of the Eipel about 1 kilometre south of Tesmag,

the course of the Eipel downstream;

thence westwards to a point to be selected on the course of the Eipel about 1 kilometre west of Tesa,

a line to be fixed on the ground so as to pass south of the station of Ipolysag and to leave entirely in Czecho-Slovak territory the railway from Ipolysag to Csata together with the branch line to Korpona (Karpfen), but leaving Bernecze and Tesa to Hungary;

thence southwards to its confluence with the Danube,

the course of the Eipel downstream;

thence to a point to be selected about 2 kilometres east of Antonienhof (east of Kittsee),

the principal channel of navigation of the Danube upstream;

thence westwards to a point to be selected on the ground about 1 kilometre west of Antonienhof (east of Kittsee), this point being the point common to the three frontiers of Austria, Hungary and Czecho-Slovakia,

a line to be fixed on the ground.

ARTICLE 28.

The frontiers described by the present treaty are traced, for such parts as are defined, on the one in a million map attached to the present treaty. In case of differences between the text and the map, the text will prevail.

ARTICLE 29.

Boundary commissions, whose composition is or will be fixed in the present treaty or in any other treaty between the Principal Allied and Associated

Powers and the, or any, interested States, will have to trace these frontiers on the ground.

They shall have the power, not only of fixing those portions which are defined as "a line to be fixed on the ground," but also, where a request to that effect is made by one of the States concerned, and the commission is satisfied that it is desirable to do so, of revising portions defined by administrative boundaries; this shall not however apply in the case of international frontiers existing in August, 1914, where the task of the commission will confine itself to the re-establishment of sign-posts and boundary-marks. They shall endeavor in both cases to follow as nearly as possible the descriptions given in the Treaties, taking into account as far as possible administrative boundaries and local economic interests.

The decisions of the commissions will be taken by a majority, and shall be binding on the parties concerned.

The expenses of the boundary commissions will be borne in equal shares by the two States concerned.

ARTICLE 30.

In so far as frontiers defined by a waterway are concerned, the phrases "course" or "channel" used in the descriptions of the present treaty signify, as regards non-navigable rivers, the median line of the waterway or of its principal branch, and, as regards navigable rivers, the median line of the principal channel of navigation. It will rest with the boundary commissions provided for by the present treaty to specify whether the frontier line shall follow any changes of the course or channel which may take place, or whether it shall be definitely fixed by the position of the course or channel at the time when the present treaty comes into force.

ARTICLE 31.

The various States interested undertake to furnish to the commissions all documents necessary for their tasks, especially authentic copies of agreements fixing existing or old frontiers, all large scale maps in existence, geodetic data, surveys completed but unpublished, and information concerning the changes of frontier watercourses.

They also undertake to instruct the local authorities to communicate to the commissions all documents, especially plans, cadastral and land books, and to furnish on demand all details regarding property, existing economic conditions, and other necessary information.

ARTICLE 32.

The various States interested undertake to give every assistance to the boundary commissions, whether directly or through local authorities, in everything that concerns transport, accommodation, labor, material (sign-posts, boundary pillars) necessary for the accomplishment of their mission.

ARTICLE 33.

The various States interested undertake to safeguard the trigonometrical points, signals, posts or frontier marks erected by the commission.

ARTICLE 34.

The pillars will be placed so as to be intervisible; they will be numbered, and their position and their number will be noted on a cartographic document.

ARTICLE 35.

The protocols defining the boundary and the maps and documents attached thereto will be made out in triplicate, of which two copies will be forwarded to the Governments of the limitrophe States and the third to the Government of the French Republic, which will deliver authentic copies to the Powers who sign the present treaty.

PART III.—POLITICAL CLAUSES FOR EUROPE.

SECTION I. ITALY.

ARTICLE 36.

Hungary renounces so far as she is concerned in favor of Italy all rights and title which she could claim over the territories of the former Austro-Hungarian Monarchy recognized as forming part of Italy in accordance with the first paragraph of Article 36 of the Treaty of Peace concluded on September 10, 1919, between the Allied and Associated Powers and Austria.

ARTICLE 37.

No sum shall be due by Italy on the ground of her entry into possession of the Palazzo Venezia at Rome.

ARTICLE 38.

Hungary shall restore to Italy within a period of three months all the wagons belonging to the Italian railways which before the outbreak of war had passed into Austria and are now in Hungary.

ARTICLE 39.

Notwithstanding the provisions of Article 252, Part X (Economic Clauses), persons having their usual residence in the territories of the former Austro-Hungarian Monarchy transferred to Italy in accordance with the first paragraph of Article 36 of the Treaty of Peace with Austria who, during the war, have been outside the territories of the former Austro-Hungarian Monarchy or have been imprisoned, interned or evacuated, shall enjoy the full benefit of the provisions of Articles 235 and 236, Part X (Economic Clauses) of the present treaty.

ARTICLE 40.

Judgments rendered since August 4, 1914, by the courts in the territory transferred to Italy in accordance with the first paragraph of Article 36 of the Treaty of Peace with Austria, in civil and commercial cases between the inhabi-

ants of such territory and other nationals of the former Kingdom of Hungary, shall not be carried into effect until after endorsement by the corresponding new court in such territory.

All decisions rendered for political crimes or offenses since August 4, 1914, by the judicial authorities of the former Austro-Hungarian Monarchy against Italian nationals, or against persons who acquire Italian nationality in accordance with the Treaty of Peace with Austria, shall be annulled.

SECTION II. SERB-CROAT-SLOVENE STATE.

ARTICLE 41.

Hungary, in conformity with the action already taken by the Allied and Associated Powers, recognizes the complete independence of the Serb-Croat-Slovene State.

ARTICLE 42.

Hungary renounces so far as she is concerned in favor of the Serb-Croat-Slovene State all rights and title over the territories of the former Austro-Hungarian Monarchy situated outside the frontiers of Hungary as laid down in Article 27, Part II (Frontiers of Hungary) and recognized by the present treaty, or by any treaties concluded for the purpose of completing the present settlement, as forming part of the Serb-Croat-Slovene State.

ARTICLE 43.

A commission consisting of seven members, five nominated by the Principal Allied and Associated Powers, one by the Serb-Croat-Slovene State, and one by Hungary, shall be constituted within fifteen days from the coming into force of the present treaty to trace on the spot the frontier line described in Article 27 (2), Part II (Frontiers of Hungary).

ARTICLE 44.

The Serb-Croat-Slovene State recognizes and confirms in relation to Hungary its obligation to accept the embodiment in a treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by these Powers to protect the interests of inhabitants of that State who differ from the majority of the population in race, language, or religion, as well as to protect freedom of transit and equitable treatment of the commerce of other nations.

The proportion and nature of the financial obligations of Hungary which the Serb-Croat-Slovene State will have to assume on account of the territory placed under its sovereignty will be determined in accordance with Article 186, Part IX (Financial Clauses) of the present treaty.

Subsequent agreements will decide all questions which are not decided by the present treaty and which may arise in consequence of the cession of the said territory.

SECTION III. ROUMANIA.

ARTICLE 45.

Hungary renounces so far as she is concerned in favor of Roumania all rights and title over the territories of the former Austro-Hungarian Monarchy situated outside the frontiers of Hungary as laid down in Article 27, Part II (Frontiers of Hungary) and recognized by the present treaty, or by any treaties concluded for the purpose of completing the present settlement, as forming part of Roumania.

ARTICLE 46.

A commission composed of seven members, five nominated by the Principal Allied and Associated Powers, one by Roumania, and one by Hungary, will be appointed within fifteen days from the coming into force of the present treaty to trace on the spot the frontier line provided for in Article 27 (3), Part II (Frontiers of Hungary).

ARTICLE 47.

Roumania recognizes and confirms in relation to Hungary her obligation to accept the embodiment in a treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by these Powers to protect the interests of inhabitants of that State who differ from the majority of the population in race, language or religion, as well as to protect freedom of transit and equitable treatment for the commerce of other nations.

The proportion and nature of the financial obligations of Hungary which Roumania will have to assume on account of the territory placed under her sovereignty will be determined in accordance with Article 186, Part IX (Financial Clauses) of the present treaty.

Subsequent agreements will decide all questions which are not decided by present treaty and which may arise in consequence of the cession of the territory.

SECTION IV. CZECHO-SLOVAK STATE.

ARTICLE 48.

Hungary, in conformity with the action already taken by the Allied and Associated Powers, recognizes the complete independence of the Czecho-Slovak State, which will include the autonomous territory of the Ruthenians to the south of the Carpathians.

ARTICLE 49.

Hungary renounces so far as she is concerned in favor of the Czecho-Slovak State all rights and title over the territories of the former Austro-Hungarian Monarchy situated outside the frontiers of Hungary as laid down in Article 27, Part II (Frontiers of Hungary) and recognized by the present treaty, or by any treaties concluded for the purpose of completing the present settlement, as forming part of the Czecho-Slovak State.

ARTICLE 50.

A commission composed of seven members, five nominated by the Principal Allied and Associated Powers, one by the Czecho-Slovak State, and one by Hungary, will be appointed within fifteen days from the coming into force of the present treaty to trace on the spot the frontier line provided for in Article 27 (4), Part II (Frontiers of Hungary).

ARTICLE 51.

The Czecho-Slovak State undertakes not to erect any military works in that portion of its territory which lies on the right bank of the Danube to the south of Bratislava (Pressburg).

ARTICLE 52.

The proportion and nature of the financial obligations of Hungary which the Czecho-Slovak State will have to assume on account of the territory placed under its sovereignty will be determined in accordance with Article 186, Part IX (Financial Clauses) of the present treaty.

Subsequent agreements will decide all questions which are not decided by the present treaty and which may arise in consequence of the cession of the said territory.

SECTION V. FIUME.

ARTICLE 53.

Hungary renounces all rights and title over Fiume and the adjoining territories which belonged to the former Kingdom of Hungary and which lie within the boundaries which may subsequently be fixed.

Hungary undertakes to accept the dispositions made in regard to these territories, particularly in so far as concerns the nationality of the inhabitants, in the treaties concluded for the purpose of completing the present settlement.

SECTION VI. PROTECTION OF MINORITIES.

ARTICLE 54.

Hungary undertakes that the stipulations contained in this section shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

ARTICLE 55.

Hungary undertakes to assure full and complete protection of life and liberty to all inhabitants of Hungary without distinction of birth, nationality, language, race or religion.

All inhabitants of Hungary shall be entitled to the free exercise, whether public or private, of any creed, religion or belief whose practices are not inconsistent with public order or public morals.

ARTICLE 56.

Hungary admits and declares to be Hungarian nationals *ipso facto* and without the requirement of any formality all persons possessing at the date of the coming into force of the present treaty rights of citizenship (*pertinenza*) within Hungarian territory who are not nationals of any other State.

ARTICLE 57.

All persons born in Hungarian territory who are not born nationals of another State shall *ipso facto* become Hungarian nationals.

ARTICLE 58.

All Hungarian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Difference of religion, creed or confession shall not prejudice any Hungarian national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honors, or the exercise of professions and industries.

No restriction shall be imposed on the free use by any Hungarian national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

Notwithstanding any establishment by the Hungarian Government of an official language, adequate facilities shall be given to Hungarian nationals of non-Magyar speech for the use of their language, either orally or in writing before the courts.

Hungarian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Hungarian nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

ARTICLE 59.

Hungary will provide in the public educational system in towns and districts in which a considerable proportion of Hungarian nationals of other than Magyar speech are resident adequate facilities for insuring that in the primary schools the instruction shall be given to the children of such Hungarian nationals through the medium of their own language. This provision shall not prevent the Hungarian Government from making the teaching of the Magyar language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Hungarian nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of sums which may be provided out of public funds under the State, municipal or other budgets, for educational, religious or charitable purposes.

ARTICLE 60.

Hungary agrees that the stipulations in the foregoing articles of this section, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The Allied and Associated Powers represented on the Council severally agree not to withhold their assent from any modification in these articles which is in due form assented to by a majority of the Council of the League of Nations.

Hungary agrees that any member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

Hungary further agrees that any difference of opinion as to questions of law or fact arising out of these articles between the Hungarian Government and any one of the Allied and Associated Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Hungarian Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

SECTION VII. CLAUSES RELATING TO NATIONALITY.

ARTICLE 61.

Every person possessing rights of citizenship (*pertinenza*) in territory which formed part of the territories of the former Austro-Hungarian Monarchy shall obtain *ipso facto* to the exclusion of Hungarian nationality the nationality of the State exercising sovereignty over such territory.

ARTICLE 62.

Notwithstanding the provisions of Article 61, persons who acquired rights of citizenship after January 1, 1910, in territory transferred under the present treaty to the Serb-Croat-Slovene State, or to the Czecho-Slovak State, will not acquire Serb-Croat-Slovene or Czecho-Slovak nationality without a permit from the Serb-Croat-Slovene State or the Czecho-Slovak State respectively.

If the permit referred to in the preceding paragraph is not applied for, or is refused, the persons concerned will obtain *ipso facto* the nationality of the State exercising sovereignty over the territory in which they previously possessed rights of citizenship.

ARTICLE 63.

Persons over 18 years of age losing their Hungarian nationality and obtaining *ipso facto* a new nationality under Article 61 shall be entitled within a period of one year from the coming into force of the present treaty to opt for the nationality of the State in which they possessed rights of citizenship before acquiring such rights in the territory transferred.

Option by a husband will cover his wife and option by parents will cover their children under 18 years of age.

Persons who have exercised the above right to opt must within the succeeding twelve months transfer their place of residence to the State for which they have opted.

They will be entitled to retain their immovable property in the territory of the other State where they had their place of residence before exercising their right to opt.

They may carry with them their movable property of every description. No export or import duties may be imposed upon them in connection with the removal of such property.

ARTICLE 64.

Persons possessing rights of citizenship in territory forming part of the former Austro-Hungarian Monarchy, and differing in race and language from the majority of the population of such territory, shall within six months from the coming into force of the present treaty severally be entitled to opt for Austria, Hungary, Italy, Poland, Roumania, the Serb-Croat-Slovene State, or the Czecho-Slovak State, if the majority of the population of the State selected is of the same race and language as the person exercising the right to opt. The provisions of Article 63 as to the exercise of the right of option shall apply to the right of option given by this article.

ARTICLE 65.

The High Contracting Parties undertake to put no hindrance in the way of the exercise of the right which the persons concerned have under the present treaty, or under treaties concluded by the Allied and Associated Powers with Germany, Austria, or Russia, or between any of the Allied and Associated Powers themselves, to choose any other nationality which may be open to them.

ARTICLE 66.

For the purposes of the provisions of this section, the status of a married woman will be governed by that of her husband, and the status of children under 18 years of age by that of their parents.

SECTION VIII. POLITICAL CLAUSES RELATING TO CERTAIN EUROPEAN STATES.

1. *Belgium.*

ARTICLE 67.

Hungary, recognizing that the Treaties of April 19, 1839, which established the status of Belgium before the war, no longer conform to the requirements of the situation, consents so far as she is concerned to the abrogation of the said treaties and undertakes immediately to recognize and to observe whatever conventions may be entered into by the Principal Allied and Associated Powers, or by any of them, in concert with the Governments of Belgium and of the Netherlands, to replace the said Treaties of 1839. If her formal adhesion should be required to such conventions or to any of their stipulations, Hungary undertakes immediately to give it.

2. *Luxemburg.*

ARTICLE 68.

Hungary agrees, so far as she is concerned, to the termination of the régime of neutrality of the Grand-Duchy of Luxemburg, and accepts in advance all international arrangements which may be concluded by the Allied and Associated Powers relating to the Grand-Duchy.

3. *Schleswig.*

ARTICLE 69.

Hungary hereby accepts so far as she is concerned all arrangements made by the Allied and Associated Powers with Germany concerning the territories whose abandonment was imposed upon Denmark by the Treaty of October 30, 1864.

4. *Turkey and Bulgaria.*

ARTICLE 70.

Hungary undertakes to recognize and accept so far as she is concerned all arrangements which the Allied and Associated Powers may make or have made with Turkey and Bulgaria with reference to any rights, interests and privileges whatever which might be claimed by Hungary or her nationals in Turkey or Bulgaria and which are not dealt with in the provisions of the present treaty.

5. *Austria.*

ARTICLE 71.

Hungary renounces in favor of Austria all rights and title over the territories of the former Kingdom of Hungary situated outside the frontiers of Hungary as laid down in Article 27 (1), Part II (Frontiers of Hungary).

A commission composed of seven members, five nominated by the Principal Allied and Associated Powers, one by Hungary and one by Austria, shall be

constituted within fifteen days from the coming into force of the present treaty to trace on the spot the frontier line referred to above.

The nationality of the inhabitants of the territories referred to in the present article shall be regulated in conformity with the dispositions of Articles 61 and 63 to 66.

6. *Russia and Russian States.*

ARTICLE 72.

(1) Hungary acknowledges and agrees to respect as permanent and inalienable the independence of all the territories which were part of the former Russian Empire on August 1, 1914.

In accordance with the provisions of Article 193, Part IX (Financial Clauses) and Article 227, Part X (Economic Clauses) of the present treaty, Hungary definitely accepts so far as she is concerned the abrogation of the Treaties of Brest-Litovsk and of all other treaties, conventions and agreements entered into by the former Austro-Hungarian Government with the Maximalist Government in Russia.

The Allied and Associated Powers formally reserve the rights of Russia to obtain from Hungary restitution and reparation based on the principles of the present treaty.

(2) Hungary undertakes to recognize the full force of all treaties or agreements which may be entered into by the Allied and Associated Powers with States now existing or coming into existence in future in the whole or part of the former Empire of Russia as it existed on August 1, 1914, and to recognize the frontiers of any such States as determined therein.

SECTION IX. GENERAL PROVISIONS.

ARTICLE 73.

The independence of Hungary is inalienable otherwise than with the consent of the Council of the League of Nations. Consequently, Hungary undertakes in the absence of the consent of the said Council to abstain from any act which might directly or indirectly or by any means whatever compromise her independence, particularly, and until her admission to membership of the League of Nations, by participation in the affairs of another Power.

ARTICLE 74.

Hungary hereby recognizes and accepts the frontiers of Austria, Bulgaria, Greece, Poland, Roumania, the Serb-Croat-Slovene State and the Czecho-Slovak State as these frontiers may be determined by the Principal Allied and Associated Powers.

Hungary undertakes to recognize the full force of the treaties of peace and additional conventions which have been or may be concluded by the Allied and Associated Powers with the Powers who fought on the side of the former Austro-Hungarian Monarchy, and to recognize whatever dispositions have been or may be made concerning the territories of the former German Empire, of Austria,

of the Kingdom of Bulgaria and of the Ottoman Empire, and to recognize the new States within their frontiers as there laid down.

ARTICLE 75.

Hungary renounces so far as she is concerned in favor of the Principal Allied and Associated Powers all rights and title over the territories which previously belonged to the former Austro-Hungarian Monarchy and which, being situated outside the new frontiers of Hungary as described in Article 27, Part II (Frontiers of Hungary), have not at present been otherwise disposed of.

Hungary undertakes to accept the settlement made by the Principal Allied and Associated Powers in regard to these territories, particularly in so far as concerns the nationality of the inhabitants.

ARTICLE 76.

No inhabitant of the territories of the former Austro-Hungarian Monarchy shall be disturbed or molested on account either of his political attitude between July 28, 1914, and the definitive settlement of the sovereignty over these territories, or the determination of his nationality effected by the present treaty.

ARTICLE 77.

Hungary will hand over without delay to the Allied and Associated Governments concerned archives, registers, plans, title-deeds and documents of every kind belonging to the civil, military, financial, judicial or other forms of administration in the ceded territories. If any one of these documents, archives, registers, title-deeds or plans is missing, it shall be restored by Hungary upon the demand of the Allied or Associated Government concerned.

In case the archives, registers, plans, title-deeds or documents referred to in the preceding paragraph, exclusive of those of a military character, concern equally the administration in Hungary, and cannot therefore be handed over without inconvenience to such administrations, Hungary undertakes, subject to reciprocity, to give access thereto to the Allied and Associated Governments concerned.

ARTICLE 78.

Separate conventions between Hungary and each of the States to which territory of the former Kingdom of Hungary is transferred, and each of the States arising from the dismemberment of the former Austro-Hungarian Monarchy, will provide for the interests of the inhabitants, especially in connection with their civil rights, their commerce and the exercise of their professions.

PART IV.—HUNGARIAN INTERESTS OUTSIDE EUROPE.

ARTICLE 79.

In territory outside her frontiers as fixed by the present treaty Hungary renounces so far as she is concerned all rights, titles and privileges in or over territory outside Europe which belonged to the former Austro-Hungarian Monarchy, or to its allies, and all rights, titles and privileges whatever their origin which it held as against the Allied and Associated Powers.

Hungary undertakes immediately to recognize and to conform to the measures which may be taken now or in the future by the Principal Allied and Associated Powers, in agreement where necessary with third Powers, in order to carry the above stipulation into effect.

SECTION I.—MOROCCO.

ARTICLE 80.

Hungary renounces, so far as she is concerned, all rights, titles and privileges conferred on her by the General Act of Algeiras of April 7, 1906, and by the Franco-German agreements of February 9, 1909, and November 4, 1911. All treaties, agreements, arrangements and contracts concluded by the former Austro-Hungarian Monarchy with the Sherifian Empire are regarded as abrogated as from August 12, 1914.

In no case can Hungary avail herself of these acts, and she undertakes not to intervene in any way in negotiations relating to Morocco which may take place between France and the other Powers.

ARTICLE 81.

Hungary hereby accepts all the consequences of the establishment of the French Protectorate in Morocco, which had been recognized by the Government of the former Austro-Hungarian Monarchy, and she renounces so far as she is concerned the régime of the capitulations in Morocco.

This renunciation shall take effect as from August 12, 1914.

ARTICLE 82.

The Sherifian Government shall have complete liberty of action in regulating the status of Hungarian nationals in Morocco and the conditions in which they can establish themselves there.

Hungarian-protected persons, *semsars* and "associés agricoles" shall be considered to have ceased, as from August 12, 1914, to enjoy the privileges attached to their status, and shall be subject to the ordinary law.

ARTICLE 83.

All movable and immovable property in the Sherifian Empire belonging to the former Austro-Hungarian Monarchy passes *ipso facto* to the Maghzen without compensation.

For this purpose, the property and possessions of the former Austro-Hungarian Monarchy shall be deemed to include all the property of the Crown, and the private property of members of the former royal family of Austria-Hungary.

All movable and immovable property in the Sherifian Empire belonging to Hungarian nationals shall be dealt with in accordance with Sections III and IV of Part X (Economic Clauses) of the present treaty.

Mining rights which may be recognized as belonging to Hungarian nationals by the Court of Arbitration set up under the Moroccan Mining Regulations shall be treated in the same way as property in Morocco belonging to Hungarian nationals.

ARTICLE 84.

The Hungarian Government shall insure the transfer to the person nominated by the French Government of the shares representing Hungary's portion of the capital of the State Bank of Morocco. This person will repay to the persons entitled thereto the value of these shares, which shall be indicated by the State Bank.

This transfer will take place without prejudice to the repayment of debts which Hungarian nationals may have contracted towards the State Bank of Morocco.

ARTICLE 85.

Moroccan goods entering Hungary shall enjoy the treatment accorded to French goods.

SECTION II.—EGYPT.

ARTICLE 86.

Hungary declares that she recognizes the protectorate proclaimed over Egypt by Great Britain on December 18, 1914, and that she renounces so far as she is concerned the régime of the capitulations in Egypt.

This renunciation shall take effect as from August 12, 1914.

ARTICLE 87.

All treaties, agreements, arrangements and contracts concluded by the Government of the former Austro-Hungarian Monarchy with Egypt are regarded as abrogated as from August 12, 1914.

In no case can Hungary avail herself of these instruments, and she undertakes not to intervene in any way in negotiations relating to Egypt which may take place between Great Britain and the other Powers.

ARTICLE 88.

Until an Egyptian law of judicial organization establishing courts with universal jurisdiction comes into force, provision shall be made, by means of decrees issued by His Highness the Sultan, for the exercise of jurisdiction over Hungarian nationals and property by the British Consular Tribunals.

ARTICLE 89.

The Egyptian Government shall have complete liberty of action in regulating the status of Hungarian nationals and the conditions under which they may establish themselves in Egypt.

ARTICLE 90.

Hungary consents, so far as she is concerned, to the abrogation of the decree issued by His Highness the Khedive on November 28, 1904, relating to the Commission of the Egyptian Public Debt, or to such changes as the Egyptian Government may think it desirable to make therein.

ARTICLE 91.

Hungary consents, so far as she is concerned, to the transfer to His Britannic Majesty's Government of the powers conferred on His Imperial Majesty the Sultan by the convention signed at Constantinople on October 29, 1888, relating to the free navigation of the Suez Canal.

She renounces all participation in the Sanitary, Maritime and Quarantine Board of Egypt and consents, so far as she is concerned, to the transfer to the Egyptian authorities of the powers of that board.

ARTICLE 92.

All property and possessions in Egypt of the former Austro-Hungarian Monarchy pass to the Egyptian Government without payment.

For this purpose, the property and possessions of the former Austro-Hungarian Monarchy shall be deemed to include all the property of the Crown, and the private property of members of the former royal family of Austria-Hungary.

All movable and immovable property in Egypt belonging to Hungarian nationals shall be dealt with in accordance with Sections III and IV of Part X (Economic Clauses) of the present treaty.

ARTICLE 93.

Egyptian goods entering Hungary shall enjoy the treatment accorded to British goods.

SECTION III.—SIAM.

ARTICLE 94.

Hungary recognizes, so far as she is concerned, that all treaties, conventions and agreements between the former Austro-Hungarian Monarchy and Siam, and all rights, title and privileges derived therefrom, including all rights of extra-territorial jurisdiction, terminated as from July 22, 1917.

ARTICLE 95.

Hungary, so far as she is concerned, cedes to Siam all her rights over the goods and property in Siam which belonged to the former Austro-Hungarian

Monarchy, with the exception of premises used as diplomatic or consular residences or offices, as well as the effects and furniture which they contain. These goods and property pass *ipso facto* and without compensation to the Siamese Government.

The goods, property and private rights of Hungarian nationals in Siam shall be dealt with in accordance with the provisions of Part X (Economic Clauses) of the present treaty.

ARTICLE 96.

Hungary waives all claims against the Siamese Government on behalf of herself or her nationals arising out of the liquidation of Hungarian property or the internment of Hungarian nationals in Siam. This provision shall not affect the rights of the parties interested in the proceeds of any such liquidation, which shall be governed by the provisions of Part X (Economic Clauses) of the present treaty.

SECTION IV.—CHINA.

ARTICLE 97.

Hungary renounces, so far as she is concerned, in favor of China all benefits and privileges resulting from the provisions of the final Protocol signed at Peking on September 7, 1901, and from all annexes, notes and documents supplementary thereto. She likewise renounces in favor of China any claim to indemnities accruing thereunder subsequent to August 14, 1917.

ARTICLE 98.

From the coming into force of the present treaty the High Contracting Parties shall apply, in so far as concerns them respectively:

(1) the arrangement of August 29, 1902, regarding the new Chinese customs tariff;

(2) the arrangement of September 27, 1905, regarding Whang-Poo, and the provisional supplementary arrangement of April 4, 1912.

China, however, will not be bound to grant to Hungary the advantages or privileges which she allowed to the former Austro-Hungarian Monarchy under these arrangements.

ARTICLE 99.

Hungary, so far as she is concerned, cedes to China all her rights over the buildings, wharves and pontoons, barracks, forts, arms and munitions of war, vessels of all kinds, wireless telegraphy installations and other public property which belonged to the former Austro-Hungarian Monarchy, and which are situated or may be in the Austro-Hungarian Concession at Tientsin or elsewhere in Chinese territory.

It is understood, however, that premises used as diplomatic or consular residences or offices, as well as the effects and furniture contained therein, are not included in the above cession, and, furthermore, that no steps shall be taken by the Chinese Government to dispose of the public and private property belonging to the former Austro-Hungarian Monarchy situated within the so-called

Legation Quarter at Peking without the consent of the diplomatic representatives of the Powers which, on the coming into force of the present treaty, remain parties to the Final Protocol of September 7, 1901.

ARTICLE 100.

Hungary agrees, so far as she is concerned, to the abrogation of the leases from the Chinese Government under which the Austro-Hungarian Concession at Tientsin is now held.

China, restored to the full exercise of her sovereign rights in the above area, declares her intention of opening it to international residence and trade. She further declares that the abrogation of the leases under which the said concession is now held shall not affect the property rights of nationals of Allied and Associated Powers who are holders of lots in this concession.

ARTICLE 101.

Hungary waives all claims against the Chinese Government or against any Allied or Associated Government arising out of the internment of Hungarian nationals in China and their repatriation. She equally renounces, so far as she is concerned, all claims arising out of the capture and condemnation of Austro-Hungarian ships in China, or the liquidation, sequestration or control of Hungarian properties, rights and interests in that country since August 14, 1917. This provision, however, shall not affect the rights of the parties interested in the proceeds of any such liquidation, which shall be governed by the provisions of Part X (Economic Clauses) of the present treaty.

PART V.—MILITARY, NAVAL AND AIR CLAUSES.

In order to render possible the initiation of a general limitation of the armaments of all nations, Hungary undertakes strictly to observe the military, naval and air clauses which follow.

SECTION I.—MILITARY CLAUSES.

CHAPTER I.—GENERAL.

ARTICLE 102.

Within three months of the coming into force of the present treaty, the military forces of Hungary shall be demobilized to the extent prescribed hereinafter.

ARTICLE 103.

Universal compulsory military service shall be abolished in Hungary. The Hungarian Army shall in future only be constituted and recruited by means of voluntary enlistment.

CHAPTER II.—EFFECTIVES AND CADRES OF THE HUNGARIAN ARMY.

ARTICLE 104.

The total number of military forces in the Hungarian Army shall not exceed 35,000 men, including officers and depot troops.

Subject to the following limitations, the formations composing the Hungarian Army shall be fixed in accordance with the wishes of Hungary:

(1) The effectives of units must be fixed between the maximum and minimum figures shown in Table IV annexed to this section.

(2) The proportion of officers, including the personnel of staffs and special services, shall not exceed one-twentieth of the total effectives with the colors, and that of non-commissioned officers shall not exceed one-fifteenth of the total effectives with the colors.

(3) The number of machine guns, guns and howitzers shall not exceed per thousand men of the total effectives with the colors those fixed in Table V annexed to this section.

The Hungarian Army shall be devoted exclusively to the maintenance of order within the territory of Hungary, and to the control of her frontiers.

ARTICLE 105.

The maximum strength of staffs and of all formations which Hungary may be permitted to raise are given in the tables annexed to this section; these figures need not be exactly followed, but must not be exceeded.

All other organizations for the command of troops or for preparation for war are forbidden.

ARTICLE 106.

All measures of mobilization, or appertaining to mobilization, are forbidden.

In no case must formations, administrative services or staffs include supplementary cadres.

The carrying out of any preparatory measures with a view to requisitioning animals or other means of military transport is forbidden.

ARTICLE 107.

The number of gendarmes, customs officers, foresters, members of the local or municipal police or other like officials may not exceed the number of men employed in a similar capacity in 1913 within the boundaries of Hungary as fixed by the present treaty. The Principal Allied and Associated Powers may, however, increase this number should the Commission of Control referred to in Article 137, after examination on the spot, consider it to be insufficient.

The number of these officials shall not be increased in the future except as may be necessary to maintain the same proportion between the number of officials and the total population in the localities or municipalities which employ them.

These officials, as well as officials employed in the railway service, must not be assembled for the purpose of taking part in any military exercises.

ARTICLE 108.

Every formation of troops not included in the tables annexed to this section is forbidden. Such other formations as may exist in excess of the 35,000 effectives authorized shall be suppressed within the period laid down by Article 102.

CHAPTER III.—RECRUITING AND MILITARY TRAINING.

ARTICLE 109.

All officers must be regulars (officers *de carrière*). Officers now serving who are retained in the army must undertake the obligation to serve in it up to the age of 40 years at least. Officers now serving who do not join the new army will be released from all military obligations; they must not take part in any military exercises, whether theoretical or practical.

Officers newly appointed must undertake to serve on the active list for 20 consecutive years at least.

The number of officers discharged for any reason before the expiration of their term of service must not exceed in any year one-twentieth of the total of officers provided for in Article 104. If this proportion is unavoidably exceeded, the resulting shortage must not be made good by fresh appointments.

ARTICLE 110.

The period of enlistment for non-commissioned officers and privates must be for a total period of not less than 12 consecutive years, including at least 6 years with the colors.

The proportion of men discharged before the expiration of the period of their enlistment for reasons of health or as a result of disciplinary measures or for any other reasons must not in any year exceed one-twentieth of the total strength fixed by Article 104. If this proportion is unavoidably exceeded, the resulting shortage must not be made good by fresh enlistments.

CHAPTER IV.—SCHOOLS, EDUCATIONAL ESTABLISHMENTS, MILITARY CLUBS
AND SOCIETIES.

ARTICLE 111.

The number of students admitted to attend the courses in military schools shall be strictly in proportion to the vacancies to be filled in the cadres of officers. The students and the cadres shall be included in the effectives fixed by Article 104.

Consequently all military schools not required for this purpose shall be abolished.

ARTICLE 112.

Educational establishments, other than those referred to in Article 111, as well as all sporting and other clubs, must not occupy themselves with any military matters.

CHAPTER V.—ARMAMENT, MUNITIONS AND MATERIAL.

ARTICLE 113.

On the expiration of three months from the coming into force of the present treaty, the armament of the Hungarian Army shall not exceed the figures fixed per thousand men in Table V annexed to this section.

Any excess in relation to effectives shall only be used for such replacements as may eventually be necessary.

ARTICLE 114.

The stock of munitions at the disposal of the Hungarian Army shall not exceed the amounts fixed in Table V annexed to this section.

Within three months from the coming into force of the present treaty the Hungarian Government shall deposit any existing surplus of armament and munitions in such places as shall be notified to it by the Principal Allied and Associated Powers.

No other stock, depot or reserve of munitions shall be formed.

ARTICLE 115.

The manufacture of arms, munitions and war material shall only be carried on in one single factory, which shall be controlled by and belong to the State, and whose output shall be strictly limited to the manufacture of such arms, munitions and war material as is necessary for the military forces and armaments referred to in Articles 104, 107, 113 and 114. The Principal Allied and Associated Powers may, however, authorize such manufacture, for such a period as they may think fit, in one or more other factories to be approved by the Commission of Control referred to in Article 137.

The manufacture of sporting weapons is not forbidden, provided that sporting weapons manufactured in Hungary taking ball cartridge are not of the same caliber as that of military weapons used in any European army.

Within three months from the coming into force of the present treaty, all other establishments for the manufacture, preparation, storage or design of arms, munitions or any other war material shall be closed down or converted to purely commercial uses.

Within the same length of time, all arsenals shall also be closed down, except those to be used as depots for the authorized stocks of munitions, and their staffs discharged.

ARTICLE 116.

The plant of any establishments or arsenals in excess of the amount required for the manufacture authorized shall be rendered useless or converted to purely commercial purposes in accordance with the decisions of the Military Inter-Allied Commission of Control referred to in Article 137.

ARTICLE 117.

Within three months from the coming into force of the present treaty all arms, munitions and war material, including any kind of anti-aircraft material, of whatever origin, existing in Hungary in excess of the quantity authorized shall be handed over to the principal Allied and Associated Powers.

Delivery shall take place at such points in Hungarian territory as may be appointed by the said Powers, who shall also decide on the disposal of such material.

ARTICLE 118.

The importation into Hungary of arms, munitions and war material of all kinds is strictly forbidden.

The manufacture for foreign countries and the exportation of arms, munitions and war material shall also be forbidden.

ARTICLE 119.

The use of flame throwers, asphyxiating, poisonous or other gases, and all similar liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Hungary.

Material specially intended for the manufacture, storage or use of the said products or devices is equally forbidden.

The manufacture and importation into Hungary of armored cars, tanks or any similar machines suitable for use in war are equally forbidden.

TABLE I.—COMPOSITION AND MAXIMUM EFFECTIVES OF AN INFANTRY DIVISION.

Units	Maximum effectives of each unit	
	Officers	Men
Headquarters of an Infantry Division	25	70
Headquarters of Divisional Infantry	5	50
Headquarters of Divisional Artillery	4	30
3 Regiments of Infantry * (on the basis of 65 officers and 2,000 men per regiment)	195	6,000
1 Squadron	6	160
1 Battalion of Trench Artillery (3 Companies)	14	500
1 Battalion of Pioneers †	14	500
Regiment Field Artillery ‡	80	1,200
1 Battalion Cyclists (comprising 3 Companies)	18	450
1 Signal Detachment §	11	330
Divisional medical corps	28	550
Divisional parks and trains	14	940
Total for an Infantry Division	414	10,780

* Each regiment comprises 3 battalions of infantry. Each battalion comprises 3 companies of infantry and 1 machine gun company.

† Each battalion comprises 1 headquarters, 2 pioneer companies, 1 bridging section, 1 searchlight section.

‡ Each regiment comprises 1 headquarters, 3 groups of field or mountain artillery, comprising 8 batteries; each battery comprising 4 guns or howitzers (field or mountain).

§ This detachment comprises 1 telegraph and telephone detachment, 1 listening section, 1 carrier pigeon section.

TABLE II.—COMPOSITION AND MAXIMUM EFFECTIVES FOR A CAVALRY DIVISION.

Units	Maximum number authorized	Maximum effectives of each unit	
		Officers	Men
Headquarters of a Cavalry Division	1	15	50
Regiment of Cavalry *	6	30	720
Group of Field Artillery (3 Batteries)	1	30	430
Group of motor machine guns and armored cars †	1	4	80
Miscellaneous services	—	30	500
Total for a Cavalry Division	—	259	5,380

* Each regiment comprises 4 squadrons.

† Each group comprises 9 fighting cars, each carrying 1 gun, 1 machine gun, and 1 spare machine gun, 4 communication cars, 2 small lorries for stores, 7 lorries, including 1 repair lorry, 4 motor cycles.

Note.—The large cavalry units may include a variable number of regiments and be divided into independent brigades within the limit of the effectives laid down above.

TABLE III.—COMPOSITION AND MAXIMUM EFFECTIVES FOR A MIXED BRIGADE.

Units	Maximum effectives of each unit	
	Officers	Men
Headquarters of a Brigade	10	50
2 Regiments of Infantry *	130	4,000
1 Cyclist Battalion (3 Companies)	18	450
1 Cavalry Squadron	5	100
1 Group Field or Mountain Artillery (3 Batteries)	20	400
1 Trench Mortar Company	5	150
Miscellaneous services	10	200
Total for Mixed Brigade	198	5,350

* Each regiment comprises 3 battalions of infantry. Each battalion comprises 3 companies of infantry and 1 machine gun company.

TABLE IV.—MINIMUM EFFECTIVES OF UNITS WHATEVER ORGANIZATION IS ADOPTED IN THE ARMY.

(Divisions, Mixed Brigades, etc.)

Units	Maximum effectives (for reference)		Minimum effectives	
	Officers	Men	Officers	Men
Infantry Division	414	10,780	300	8,000
Cavalry Division	259	5,380	180	3,650
Mixed Brigade	198	5,350	140	4,250
Regiment of Infantry	65	2,000	52	1,600
Battalion of Infantry	16	650	12	500
Company of Infantry or Machine Guns	3	160	2	120
Cyclist Group	18	450	12	300
Regiment of Cavalry	30	720	20	450
Squadron of Cavalry	6	160	3	100
Regiment of Artillery	80	1,200	60	1,000
Battery of Field Artillery	4	150	2	120
Company of Trench Mortars	3	150	2	100
Battalion of Pioneers	14	500	8	300
Battery of Mountain Artillery	5	320	3	200

TABLE V.—MAXIMUM AUTHORIZED ARMAMENTS AND MUNITION SUPPLIES.

Material	Quantity for 1,000 men	Amount of munitions per arm (rifles, guns, etc.)
Rifles or Carbines *	1,150	500 rounds.
Machine guns, heavy or light	15	10,000 rounds.
Trench Mortars, light	2	1,000 rounds.
Trench Mortars, medium		500 rounds.
Guns or howitzers (field or mountain)	3	1,000 rounds.

* Automatic rifles or carbines are counted as light machine guns.

N.B.—No heavy gun, i.e., of a caliber greater than 105 mm., is authorized.

SECTION II.—NAVAL CLAUSES.

ARTICLE 120.

From the date of the coming into force of the present treaty all Austro-Hungarian warships, submarines included, are declared to be finally surrendered to the Principal Allied and Associated Powers.

All the monitors, torpedo boats and armed vessels of the Danube flotilla will be surrendered to the Principal Allied and Associated Powers.

Hungary will, however, have the right to maintain on the Danube for the use

of the river police three patrol boats to be selected by the commission referred to in Article 138 of the present treaty. The Principal Allied and Associated Powers may increase this number should the said commission, after examination on the spot, consider it to be insufficient.

ARTICLE 121.

The Austro-Hungarian auxiliary cruisers and fleet auxiliaries enumerated below will be disarmed and treated as merchant ships:

<i>Bosnia.</i>	<i>President Wilson (ex Kaiser</i>	<i>Pola.</i>
<i>Gablonz.</i>	<i>Franz Joseph).</i>	<i>Najade.</i>
<i>Carolina.</i>	<i>Trieste.</i>	<i>Baron Bruck.</i>
<i>Lussin.</i>	<i>Dalmat.</i>	<i>Elizabet.</i>
<i>Teodo.</i>	<i>Persia.</i>	<i>Metcavich.</i>
<i>Nixe.</i>	<i>Prince Hohenlohe.</i>	<i>Baron Call.</i>
<i>Gigante.</i>	<i>Gastein.</i>	<i>Gaea.</i>
<i>Africa.</i>	<i>Helouan.</i>	<i>Cyclop.</i>
<i>Tirol.</i>	<i>Graf Wurmbrand.</i>	<i>Vesta.</i>
<i>Argentina.</i>	<i>Pelikan.</i>	<i>Nymphe.</i>
<i>Pluto.</i>	<i>Herkules.</i>	<i>Buffel.</i>

ARTICLE 122.

All warships, including submarines, now under construction in Hungarian ports, or in ports which previously belonged to the Austro-Hungarian Monarchy, shall be broken up.

The work of breaking up these vessels will be commenced as soon as possible after the coming into force of the present treaty.

The mine-layer tenders under construction at Porto-re may, however, be preserved if the Naval Inter-Allied Commission of Control and the Reparation Commission consider that for economic reasons their employment for commercial purposes is desirable. In that event the vessels will be handed over to the Reparation Commission, which will assess their value, and will credit such value, in whole or in part, to Hungary, or as the case may require to Austria, or the reparation account.

ARTICLE 123.

Articles, machinery and material arising from the breaking up of Austro-Hungarian warships of all kinds, whether surface vessels or submarines, may not be used except for purely industrial or commercial purposes.

They may not be sold or disposed of to foreign countries.

ARTICLE 124.

The construction or acquisition of any submarine, even for commercial purposes, shall be forbidden in Hungary.

ARTICLE 125.

All arms, ammunition and other naval war material, including mines and torpedoes, which belonged to Austria-Hungary at the date of the signature of

the armistice of November 3, 1918, are declared to be finally surrendered to the Principal Allied and Associated Powers.

ARTICLE 126.

Hungary is held responsible for the delivery (Articles 120 and 125), the disarmament (Article 121), the demolition (Article 122), as well as the disposal (Article 121) and the use (Article 123) of the objects mentioned in the preceding articles only so far as these remain in her own territory.

ARTICLE 127.

During the three months following the coming into force of the present treaty, the Hungarian high-power wireless telegraphy station at Budapest shall not be used for the transmission of messages concerning naval, military or political questions of interest to Hungary, or any State which has been allied to Austria-Hungary in the war, without the assent of the Principal Allied and Associated Powers. This station may be used for commercial purposes, but only under the supervision of the said Powers, who will decide the wave-length to be used.

During the same period Hungary shall not build any more high-power wireless telegraphy stations in her own territory or that of Austria, Germany, Bulgaria or Turkey.

SECTION III.—AIR CLAUSES.

ARTICLE 128.

The armed forces of Hungary must not include any military or naval air forces.

No dirigible shall be kept.

ARTICLE 129.

Within two months from the coming into force of the present treaty, the personnel of the air forces on the rolls of the Hungarian land and sea forces shall be demobilized.

ARTICLE 130.

Until the complete evacuation of Hungarian territory by the Allied and Associated troops the aircraft of the Allied and Associated Powers shall enjoy in Hungary freedom of passage through the air, freedom of transit and of landing.

ARTICLE 131.

During the six months following the coming into force of the present treaty, the manufacture, importation and exportation of aircraft, parts of aircraft, engines for aircraft, and parts of engines for aircraft shall be forbidden in all Hungarian territory.

ARTICLE 132.

On the coming into force of the present treaty, all military and naval aeronautical material must be delivered by Hungary and at her expense to the Principal Allied and Associated Powers.

Delivery must be effected at such places as the Governments of the said Powers may select, and must be completed within three months.

In particular, this material will include all items under the following heads which are or have been in use or were designed for warlike purposes:

Complete aeroplanes and seaplanes, as well as those being manufactured, repaired or assembled.

Dirigibles able to take the air, being manufactured, repaired or assembled.

Plant for the manufacture of hydrogen.

Dirigible sheds and shelters of every kind for aircraft.

Pending their delivery, dirigibles will, at the expense of Hungary, be maintained inflated with hydrogen; the plant for the manufacture of hydrogen, as well as the sheds for dirigibles, may, at the discretion of the said Powers, be left to Hungary until the time when the dirigibles are handed over.

Engines for aircraft.

Nacelles and fuselages.

Armament (guns, machine guns, light machine guns, bomb-dropping apparatus, torpedo apparatus, synchronization apparatus, aiming apparatus).

Munitions (cartridges, shells, bombs loaded or unloaded, stocks of explosives or of material for their manufacture).

Instruments for use on aircraft.

Wireless apparatus and photographic or cinematograph apparatus for use on aircraft.

Component parts of any of the items under the preceding heads.

The material referred to above shall not be removed without special permission from the said Governments.

SECTION IV.—INTER-ALLIED COMMISSIONS OF CONTROL.

ARTICLE 133.

All the Military, Naval and Air Clauses contained in the present treaty for the execution of which a time limit is prescribed shall be executed by Hungary under the control of Inter-Allied Commissions specially appointed for this purpose by the Principal Allied and Associated Powers.

The above-mentioned commissions will represent the Principal Allied and Associated Powers in dealing with the Hungarian Government in all matters concerning the execution of the Military, Naval and Air Clauses. They will communicate to the Hungarian authorities the decisions which the Principal Allied and Associated Powers have reserved the right to take or which the execution of the said clauses may necessitate.

ARTICLE 134.

The Inter-Allied Commissions of Control may establish their organizations at Budapest and shall be entitled, as often as they think desirable, to proceed to any point whatever in Hungarian territory, or to send a sub-commission, or to authorize one or more of their members to go, to any such point.

ARTICLE 135.

The Hungarian Government must furnish to the Inter-Allied Commissions of Control all such information and documents as the latter may deem necessary to ensure the execution of their mission, and all means (both in personnel and in material) which the above-mentioned Commissions may need to ensure the complete execution of the Military, Naval or Air Clauses.

The Hungarian Government must attach a qualified representative to each Inter-Allied Commission of Control with the duty of receiving from the latter any communications which it may have to address to the Hungarian Government, and furnishing it with, or procuring, all information or documents demanded.

ARTICLE 136.

The upkeep and cost of the Commissions of Control and the expense involved by their work shall be borne by Hungary.

ARTICLE 137.

It will be the special duty of the Military Inter-Allied Commission of Control to receive from the Hungarian Government the notifications relating to the location of the stocks and depots of munitions, and the location of the works or factories for the production of arms, munitions and war material and their operations.

It will take delivery of the arms, munitions, war material and plant intended for war construction, will select the points where such delivery is to be effected, and will supervise the works of destruction, and rendering things useless, or of transformation of material, which are to be carried out in accordance with the present treaty.

ARTICLE 138.

It will be the special duty of the Naval Inter-Allied Commission of Control to proceed to the building yards and to supervise the breaking-up of the ships which are under construction there, to take delivery of arms, munitions and naval war material, and to supervise the destruction and breaking-up provided for.

The Hungarian Government must furnish to the Naval Inter-Allied Commission of Control all such information and documents as the commission may deem necessary to ensure the complete execution of the Naval Clauses, in particular the designs of the warships, the composition of their armaments, the details and models of the guns, munitions, torpedoes, mines, explosives, wireless telegraphic apparatus, and in general everything relating to naval war material, as well as all legislative or administrative documents or regulations.

ARTICLE 139.

It will be the special duty of the Aeronautical Inter-Allied Commission of Control to make an inventory of the aeronautical material which is actually in the possession of the Hungarian Government, to inspect aeroplane, balloon

and motor manufactories, and factories producing arms, munitions and explosives capable of being used by aircraft, to visit all aerodromes, sheds, landing grounds, parks and depots which are now in Hungarian territory, and to authorize where necessary a removal of material and to take delivery of such material.

The Hungarian Government must furnish to the Aeronautical Inter-Allied Commission of Control all such information and legislative, administrative or other documents which the commission may consider necessary to ensure the complete execution of the Air Clauses, and, in particular, a list of the personnel belonging to all the air services of Hungary and of the existing material, as well as of that in process of manufacture or on order, and a list of all establishments working for aviation, of their positions, and of all sheds and landing grounds.

SECTION V.—GENERAL ARTICLES.

ARTICLE 140.

After the expiration of a period of three months from the coming into force of the present treaty, the Hungarian laws must have been modified and shall be maintained by the Hungarian Government in conformity with this part of the present treaty.

Within the same period all the administrative or other measures relating to the execution of this part must have been taken by the Hungarian Government.

ARTICLE 141.

The following portions of the armistice of November 3, 1918: paragraphs 2 and 3 of Chapter I (Military Clauses), paragraphs 2, 3, 6 of Chapter I of the annexed Protocol (Military Clauses), remain in force so far as they are not inconsistent with the above stipulations.

ARTICLE 142.

Hungary undertakes, from the coming into force of the present treaty, not to accredit nor to send to any foreign country any military, naval or air mission, nor to allow any such mission to leave her territory; Hungary further agrees to take the necessary measures to prevent Hungarian nationals from leaving her territory to enlist in the army, navy or air service of any foreign power, or to be attached to such army, navy or air service for the purposes of assisting in the military, naval or air training thereof, or generally for the purpose of giving military, naval or air instruction in any foreign country.

The Allied and Associated Powers undertake, so far as they are concerned, that from the coming into force of the present treaty they will not enroll in nor attach to their armies or naval or air forces any Hungarian national for the purpose of assisting in the military training of such armies or naval or air forces, or otherwise employ any such Hungarian national as military, naval or aeronautic instructor.

The present provision does not, however, affect the right of France to recruit for the Foreign Legion in accordance with French military laws and regulations.

ARTICLE 143.

So long as the present treaty remains in force, Hungary undertakes to submit to any investigation which the Council of the League of Nations, acting if need be by a majority vote, may consider necessary.

PART VI.—PRISONERS OF WAR AND GRAVES.

SECTION I.—PRISONERS OF WAR.

ARTICLE 144.

The repatriation of Hungarian prisoners of war and interned civilians shall take place as soon as possible after the coming into force of the present treaty, and shall be carried out with the greatest rapidity.

ARTICLE 145.

The repatriation of Hungarian prisoners of war and interned civilians shall, in accordance with Article 144, be carried out by a commission composed of representatives of the Allied and Associated Powers on the one part and of the Hungarian Government on the other part.

For each of the Allied and Associated Powers a sub-commission composed exclusively of representatives of the interested Power and of delegates of the Hungarian Government shall regulate the details of carrying into effect the repatriation of prisoners of war.

ARTICLE 146.

From the time of their delivery into the hands of the Hungarian authorities, the prisoners of war and interned civilians are to be returned without delay to their homes by the said authorities.

Those among them who before the war were habitually resident in territory occupied by the troops of the Allied and Associated Powers are likewise to be sent to their homes, subject to the consent and control of the military authorities of the Allied and Associated armies of occupation.

ARTICLE 147.

The whole cost of repatriation from the moment of starting shall be borne by the Hungarian Government, who shall also provide means of transport and working personnel as considered necessary by the commission referred to in Article 145.

ARTICLE 148.

Prisoners of war and interned civilians awaiting disposal or undergoing sentence for offences against discipline shall be repatriated irrespective of the completion of their sentence or of the proceedings pending against them.

This stipulation shall not apply to prisoners of war and interned civilians punished for offences committed subsequent to January 1, 1920.

During the period pending their repatriation, all prisoners of war and interned civilians shall remain subject to the existing regulations, more especially as regards work and discipline.

ARTICLE 149.

Prisoners of war and interned civilians who are awaiting trial or undergoing sentence for offences other than those against discipline may be detained.

ARTICLE 150.

The Hungarian Government undertakes to admit to its territory without distinction all persons liable to repatriation.

Prisoners of war or other Hungarian nationals who do not desire to be repatriated may be excluded from repatriation; but the Allied and Associated Governments reserve to themselves the right either to repatriate them or to take them to a neutral country or to allow them to reside in their own territories.

The Hungarian Government undertakes not to institute any exceptional proceedings against these persons or their families nor to take any repressive or vexatious measures of any kind whatsoever against them on this account.

ARTICLE 151.

The Allied and Associated Governments reserve the right to make the repatriation of Hungarian prisoners of war or Hungarian nationals in their hands conditional upon the immediate notification and release by the Hungarian Government of any prisoners of war and other nationals of the Allied and Associated Powers who are still held in Hungary against their will.

ARTICLE 152.

The Hungarian Government undertakes:

(1) to give every facility to commissions to inquire into the cases of those who cannot be traced; to furnish such commissions with all necessary means of transport; to allow them access to camps, prisons, hospitals and all other places; and to place at their disposal all documents whether public or private which would facilitate their inquiries;

(2) to impose penalties upon any Hungarian officials or private persons who have concealed the presence of any nationals of any of the Allied or Associated Powers, or who have neglected to reveal the presence of any such after it had come to their knowledge.

ARTICLE 153.

The Hungarian Government undertakes to restore without delay from the date of the coming into force of the present treaty all articles, money, securities and documents which have belonged to nationals of the Allied and Associated Powers and which have been retained by the Hungarian authorities.

ARTICLE 154.

The High Contracting Parties waive reciprocally all repayment of sums due for the maintenance of prisoners of war in their respective territories.

SECTION II.—GRAVES.

ARTICLE 155.

The Allied and Associated Governments and the Hungarian Government will cause to be respected and maintained the graves of the soldiers and sailors buried in their respective territories.

They agree to recognize any commission appointed by the several governments for the purpose of identifying, registering, caring for or erecting suitable memorials over the said graves, and to facilitate the discharge of its duties.

Furthermore, they agree to afford, so far as the provisions of their laws and the requirements of public health allow, every facility for giving effect to requests that the bodies of their soldiers and sailors may be transferred to their own country.

ARTICLE 156.

The graves of prisoners of war and interned civilians who are nationals of the different belligerent States and have died in captivity shall be properly maintained in accordance with Article 155 of the present treaty.

The Allied and Associated Governments on the one part and the Hungarian Government on the other part reciprocally undertake also to furnish to each other;

(1) a complete list of those who have died, together with all information useful for identification;

(2) all information as to the number and positions of the graves of all those who have been buried without identification.

PART VII.—PENALTIES.

ARTICLE 157.

The Hungarian Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecutions before a tribunal in Hungary or in the territory of her allies.

The Hungarian Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the Hungarian authorities.

ARTICLE 158.

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the

Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

ARTICLE 159.

The Hungarian Government undertakes to furnish all documents and information of every kind the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility.

ARTICLE 160.

The provisions of Articles 157 to 159 apply similarly to the Governments of the States to which territory belonging to the former Austro-Hungarian Monarchy has been assigned, in so far as concerns persons accused of having committed acts contrary to the laws and customs of war who are in the territory or at the disposal of the said States.

If the persons in question have acquired the nationality of one of the said States, the Government of such State undertakes to take, at the request of the Power concerned and in agreement with it, all the measures necessary to insure the prosecution and punishment of such persons.

PART VIII.—REPARATION.

SECTION I.—GENERAL PROVISIONS.

ARTICLE 161.

The Allied and Associated Governments affirm and Hungary accepts the responsibility of Hungary and her allies for causing the loss and damage to which the Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Austria-Hungary and her allies.

ARTICLE 162.

The Allied and Associated Governments recognize that the resources of Hungary are not adequate, after taking into account the permanent diminutions of such resources which will result from other provisions of the present treaty, to make complete reparation for such loss and damage.

The Allied and Associated Governments, however, require, and Hungary undertakes, that she will make compensation as hereinafter determined for damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied and Associated Power against Hungary by the said aggression by land, by sea and from the air, and in general all damage as defined in Annex I hereto.

ARTICLE 163.

The amount of such damage for which compensation is to be made by Hungary shall be determined by an Inter-Allied Commission to be called the *Reparation*

Commission and constituted in the form and with the powers set forth in the present treaty, particularly in Annexes II-V inclusive hereto. The Commission is the same as that provided for under Article 233 of the treaty with Germany, subject to any modifications resulting from the present treaty. The Commission shall constitute a section to consider the special questions raised by the application of the present treaty; this section shall have consultative power only, except in cases in which the Commission shall delegate to it such powers as may be deemed convenient.

The Reparation Commission shall consider the claims and give to the Hungarian Government a just opportunity to be heard.

The Commission shall concurrently draw up a schedule of payments prescribing the time and manner for securing and discharging by Hungary, within thirty years dating from May 1, 1921, that part of the debt which shall have been assigned to her after the Commission has decided whether Germany is in a position to pay the balance of the total amount of claims presented against Germany and her allies and approved by the Commission. If, however, within the period mentioned, Hungary fails to discharge her obligations, any balance remaining unpaid may, within the discretion of the Commission, be postponed for settlement in subsequent years or may be handled otherwise in such manner as the Allied and Associated Governments acting in accordance with the procedure laid down in this part of the present treaty shall determine.

ARTICLE 164.

The Reparation Commission shall, after May 1, 1921, from time to time consider the resources and capacity of Hungary, and, after giving her representatives a just opportunity to be heard, shall have discretion to extend the date and to modify the form of payments such as are to be provided for in accordance with Article 163, but not to cancel any part except with the specific authority of the several governments represented on the commission.

ARTICLE 165.

Hungary shall pay in the course of the year 1920 and the first four months of 1921, in such instalments and in such manner (whether in gold, commodities, ships, securities or otherwise) as the Reparation Commission may lay down, a reasonable sum which shall be determined by the Commission. Out of this sum the expenses of the armies of occupation subsequent to the armistice of November 3, 1918, provided for by Article 181, shall first be met, and such supplies of food and raw materials as may be judged by the Governments of the Principal Allied and Associated Powers essential to enable Hungary to meet her obligations for reparation may also, with the approval of the said Governments, be paid for out of the above sum. The balance shall be reckoned towards the liquidation of the amount due for reparation. Hungary shall further deposit bonds as prescribed in paragraph 12 (c) of Annex II hereto.

ARTICLE 166.

Hungary further agrees to the direct application of her economic resources to reparation as specified in Annexes III, IV and V relating respectively to

merchant shipping, to physical restoration and to raw material; provided always that the value of the property transferred and any services rendered by her under these annexes, assessed in the manner therein prescribed, shall be credited to her towards the liquidation of her obligations under the above articles.

ARTICLE 167.

The successive instalments, including the above sum, paid over by Hungary in satisfaction of the above claims will be divided by the Allied and Associated Governments in proportions which have been determined upon by them in advance on a basis of general equity and the rights of each.

For the purposes of this division the value of the credits referred to in Article 173 and in Annexes III, IV and V shall be reckoned in the same manner as cash payments made in the same year.

ARTICLE 168.

In addition to the payments mentioned above, Hungary shall effect, in accordance with the procedure laid down by the Reparation Commission, restitution in cash of cash taken away, seized or sequestered, and also restitution of animals, objects of every nature and securities taken away, seized or sequestered in the cases in which it proves possible to identify them on territory belonging to, or during the execution of the present treaty in the possession of, Hungary or her allies.

ARTICLE 169.

The Hungarian Government undertakes to make forthwith the restitution contemplated in Article 168 and to make the payments and deliveries contemplated in Articles 163, 164, 165 and 166.

ARTICLE 170.

The Hungarian Government recognizes the Commission provided for by Article 163 as the same may be constituted by the Allied and Associated Governments in accordance with Annex II, and agrees irrevocably to the possession and exercise by such Commission of the power and authority given to it under the present treaty.

The Hungarian Government will supply to the Commission all the information which the Commission may require relative to the financial situation and operations and to the property, productive capacity and stocks, and current production of raw materials and manufactured articles of Hungary and her nationals, and, further, any information relative to the military operations of the war of 1914-1919 which, in the judgment of the Commission, may be necessary.

The Hungarian Government shall accord to the members of the Commission and its authorized agents the same rights and immunities as are enjoyed in Hungary by duly accredited diplomatic agents of friendly Powers.

Hungary further agrees to provide for the salaries and the expenses of the Commission and of such staff as it may employ.

ARTICLE 171.

Hungary undertakes to pass, issue and maintain in force any legislation, orders and decrees that may be necessary to give complete effect to these provisions.

ARTICLE 172.

The provisions in this part of the present treaty shall not affect in any respect the provisions of Sections III and IV of Part X (Economic Clauses) of the present treaty.

ARTICLE 173.

The following shall be reckoned as credits to Hungary in respect of her reparation obligations:

(a) any final balance in favor of Hungary under Sections III and IV of Part X (Economic Clauses) of the present treaty;

(b) amounts due to Hungary in respect of transfers provided for in Part IX (Financial Clauses) and in Part XII (Ports, Waterways and Railways);

(c) all amounts which, in the judgment of the Reparation Commission, should be credited to Hungary on account of any other transfers under the present treaty of property, rights, concessions or other interests.

In no case, however, shall credit be given for property restored in accordance with Article 168.

ARTICLE 174.

The transfer of the Hungarian submarine cables, in the absence of any special provision in the present treaty, is regulated by Annex VI hereto.

ANNEX I.

Compensation may be claimed from Hungary in accordance with Article 162 above in respect of the total damage under the following categories:

1. Damage to injured persons and to surviving dependents by personal injury to or death of civilians caused by acts of war, including bombardment or other attacks on land, on sea or from the air, and of the direct consequences thereof and of all operations of war by the two groups of belligerents wherever arising.

2. Damage caused by Hungary or her allies to civilian victims of acts of cruelty, violence or maltreatment (including injuries to life or health as a consequence of imprisonment, deportation, internment or evacuation, of exposure at sea, or of being forced to labor) wherever arising, and to the surviving dependents of such victims.

3. Damage caused by Hungary or her allies in their own territory or in occupied or invaded territory to civilian victims of all acts injurious to health or capacity to work or to honor, as well as to the surviving dependents of such victims.

4. Damage caused by any kind of maltreatment of prisoners of war.

5. As damage caused to the peoples of the Allied and Associated Powers, all pensions or compensations in the way of pensions to naval and military

victims of war, including members of the air force, whether mutilated, wounded, sick or invalided, and to the dependents of such victims, the amount due to the Allied and Associated Governments being calculated for each of them as being the capitalized cost of such pensions and compensations at the date of the coming into force of the present treaty on the basis of the scales in force in France on May 1, 1919.

6. The cost of assistance by the Governments of the Allied and Associated Powers to prisoners of war, to their families and dependents.

7. Allowances by the Governments of the Allied and Associated Powers to the families and dependents of mobilized persons or persons serving with the forces, the amount due to them for each calendar year in which hostilities occurred being calculated for each Government on the basis of the average scale for such payments in force in France during that year.

8. Damage caused to civilians by being forced by Hungary or her allies to labor without just remuneration.

9. Damage in respect of all property, wherever situated, belonging to any of the Allied or Associated States or their nationals, with the exception of naval or military works or materials, which has been carried off, seized, injured or destroyed by the acts of Hungary or her allies on land, on sea or from the air, or damage directly in consequence of hostilities or of any operations of war.

10. Damage in the form of levies, fines and other similar exactions imposed by Hungary or her allies upon the civilian population.

ANNEX II.

1. The commission referred to in Article 163 shall be called the "Reparation Commission," and is hereafter referred to as "the Commission."

2. The delegates to this Commission shall be appointed by the United States of America, Great Britain, France, Italy, Japan, Belgium, Greece, Poland, Roumania, the Serb-Croat-Slovene State and Czecho-Slovakia. The United States of America, Great Britain, France, Italy, Japan and Belgium shall each appoint a delegate. The other five Powers shall appoint a delegate to represent them all under the conditions indicated in the second sub-paragraph of paragraph 3 hereafter. At the time when each delegate is appointed there shall also be appointed an assistant delegate, who will take his place in case of illness or necessary absence, but at other times will only have the right to be present at the proceedings without taking any part therein.

On no occasion shall delegates of more than five of the above Powers have the right to take part in the proceedings of the Commission and to record their votes. The delegates of the United States, Great Britain, France and Italy shall have this right on all occasions. The delegate of Belgium shall have this right on all occasions other than those referred to below. The delegate of Japan will have this right when questions relating to damage at sea are under consideration. The delegate representing the five remaining Powers mentioned above shall have this right when questions relating to Austria, Hungary or Bulgaria are under consideration.

Each of the Governments represented on the Commission shall have the right to withdraw after giving twelve months' notice to the Commission and confirming it six months after the date of the original notification.

3. Such of the Allied and Associated Powers as may be interested shall have the right to name a delegate to be present and act as assessor only while their respective claims and interests are under examination or discussion, but without the right to vote.

The section to be established by the Commission under Article 163 shall include representatives of the following Powers: The United States of America, Great Britain, France, Italy, Greece, Poland, Roumania, the Serb-Croat-Slovene State and Czecho-Slovakia. This composition of the section shall in no way prejudice the admissibility of any claims. In voting the representatives of the United States of America, Great Britain, France and Italy shall each have two votes.

The representatives of the five remaining Powers mentioned above shall appoint a delegate to represent them all, who shall sit on the Reparation Commission in the circumstances described in paragraph 2 of the present annex. This delegate, who shall be appointed for one year, shall be chosen successively from the nationals of each of the said five Powers.

4. In the case of death, resignation or recall of any delegate, assistant delegate or assessor, a successor to him shall be nominated as soon as possible.

5. The Commission shall have its principal permanent bureau in Paris, and shall hold its first meeting in Paris as soon as practicable after the coming into force of the present treaty, and thereafter will meet in such place or places and at such time as may be deemed convenient and as may be necessary for the most expeditious discharge of its duties.

6. At its first meeting the Commission shall elect from among the delegates referred to above a chairman and a vice-chairman, who shall hold office for a year and shall be eligible for re-election. If a vacancy in the chairmanship or vice-chairmanship should occur during the annual period, the Commission shall proceed to a new election for the remainder of the said period.

7. The Commission is authorized to appoint all necessary officers, agents and employees who may be required for the execution of its functions, and to fix their remuneration; to constitute sections or committees, whose members need not necessarily be members of the Commission, and to take all executive steps necessary for the purpose of discharging its duties; and to delegate authority and discretion to officers, agents, sections and committees.

8. All the proceedings of the Commission shall be private unless on particular occasions the Commission shall otherwise determine for special reasons.

9. The Commission shall be required, if the Hungarian Government so desire, to hear within a period which it will fix from time to time evidence and arguments on the part of Hungary on any questions connected with her capacity to pay.

10. The Commission shall consider the claims and give to the Hungarian Government a just opportunity to be heard, but not take any part whatever in the decisions of the Commission. The Commission shall afford a similar

opportunity to the allies of Hungary when it shall consider that their interests are in question.

11. The Commission shall not be bound by any particular code or rules of law or by any particular rule of evidence or of procedure, but shall be guided by justice, equity and good faith. Its decisions must follow the same principles and rules in all cases where they are applicable. It will establish rules relating to methods of proof of claims. It may act on any trustworthy modes of computation.

12. The Commission shall have all the powers conferred upon it and shall exercise all the functions assigned to it by the present treaty.

The Commission shall, in general, have wide latitude as to its control and handling of the whole reparation problem as dealt with in this part, and shall have authority to interpret its provisions. Subject to the provisions of the present treaty, the Commission is constituted by the several Allied and Associated Governments referred to in paragraphs 2 and 3 above as the exclusive agency of the said Governments respectively for receiving, selling, holding and distributing the reparation payments to be made by Hungary under this part of the present treaty. The Commission must comply with the following conditions and provisions:

(a) Whatever part of the full amount of the proved claims is not paid in gold or in ships, securities, commodities or otherwise, Hungary shall be required, under such conditions as the Commission may determine, to cover by way of guarantee by an equivalent issue of bonds, obligations or otherwise, in order to constitute an acknowledgment of the said part of the debt.

(b) In periodically estimating Hungary's capacity to pay, the Commission shall examine the Hungarian system of taxation, first, to the end that the sums for reparation which Hungary is required to pay shall become a charge upon all her revenues prior to that for the service or discharge of any domestic loan, and, secondly, so as to satisfy itself that in general the Hungarian scheme of taxation is fully as heavy proportionately as that of any of the Powers represented on the Commission.

The Reparation Commission shall receive instructions to take account of: (1) the actual economic and financial position of Hungarian territory as delimited by the present treaty, and (2) the diminution of its resources and of its capacity for payment resulting from the clauses of the present treaty. As long as the position of Hungary is not modified the Commission shall take account of these considerations in fixing the final amount of the obligations to be imposed on Hungary, the payments by which these are to be discharged, and any postponement of payment of interest which may be asked for by Hungary.

(c) The Commission shall, as provided in Article 165, take from Hungary, by way of security for and acknowledgment of her debt, gold bearer bonds free of all taxes or charges of every description established or to be established by the Hungarian Government or by any authorities subject to it. These bonds will be delivered at any time that may be judged expedient by the Commission, and in three portions, of which the respective amounts will be also fixed by the

Commission (the crowns gold being payable in conformity with Article 197, Part IX (Financial Clauses) of the present treaty):

(1) A first issue in bearer bonds payable not later than May 1, 1921, without interest. There shall be specially applied to the amortization of these bonds the payments which Hungary is pledged to make in conformity with Article 165, after deduction of the sums used for the reimbursement of the expenses of the armies of occupation and other payments for foodstuffs and raw materials. Such bonds as may not have been redeemed by May 1, 1921, shall then be exchanged for new bonds of the same type as those provided for below (paragraph 12, (c) (2)).

(2) A second issue in bearer bonds bearing interest at $2\frac{1}{2}$ per cent. between 1921 and 1926, and thereafter at 5 per cent. with an additional 1 per cent. for amortization beginning in 1926 on the whole amount of the issue.

(3) An undertaking in writing to issue, when, but not until, the Commission is satisfied that Hungary can meet the interest and sinking fund obligations, a further instalment of bearer bonds bearing interest at 5 per cent., the time and mode of payment of principal and interest to be determined by the Commission.

The dates for the payment of interest, the manner of employing the amortization fund and all other questions relating to the issue, management and regulation of the bond issue shall be determined by the Commission from time to time.

Further issues by way of acknowledgment and security may be required as the Commission subsequently determines from time to time.

In case the Reparation Commission should proceed to fix definitely and no longer provisionally the sum of the common charges to be borne by Hungary as a result of the claims of the Allied and Associated Powers, the Commission shall immediately annul all bonds which may have been issued in excess of this sum.

(d) In the event of bonds, obligations or other evidence of indebtedness issued by Hungary by way of security for or acknowledgment of her reparation debt being disposed of outright, not by way of pledge, to persons other than the several Governments in whose favor Hungary's original indebtedness was created, an amount of such reparation indebtedness shall be deemed to be extinguished corresponding to the nominal value of the bonds, etc., so disposed of outright, and the obligation of Hungary in respect of such bonds shall be confined to her liabilities to the holders of the bonds, as expressed upon their face.

(e) The damage for repairing, reconstructing and rebuilding property situated in the invaded and devastated districts, including re-installation of furniture, machinery and other equipment, will be calculated according to the cost at the date when the work is done.

(f) Decisions of the Commission relating to the total or partial cancellation of the capital or interest of any of the verified debt of Hungary must be accompanied by a statement of its reasons.

13. As to voting, the Commission will observe the following rules:

When a decision of the Commission is taken, the votes of all the delegates entitled to vote, or, in the absence of any of them, of their assistant delegates,

shall be recorded. Abstention from voting is to be treated as a vote against the proposal under discussion. Assessors shall have no vote.

On the following questions unanimity is necessary:

(a) Questions involving the sovereignty of any of the Allied and Associated Powers, or the cancellation of the whole or any part of the debt or obligations of Hungary;

(b) Questions of determining the amount and conditions of bonds or other obligations to be issued by the Hungarian Government and of fixing the time and manner for selling, negotiating or distributing such bonds;

(c) Any postponement, total or partial, beyond the end of 1930, of the payment of instalments falling due between May 1, 1921, and the end of 1926 inclusive;

(d) Any postponement, total or partial, of any instalments falling due after 1926 for a period exceeding three years;

(e) Questions of applying in any particular case a method of measuring damages different from that which has been previously applied in a similar case;

(f) Questions of the interpretation of the provisions of this part of the present treaty.

All other questions shall be decided by the vote of the majority.

In the case of any difference of opinion among the delegates, which cannot be solved by reference to their Governments, upon the question whether a given case is one which requires a unanimous vote for its decision or not, such difference shall be referred to the immediate arbitration of some impartial person to be agreed upon by their Governments whose award the Allied and Associated Governments agree to accept.

14. Decisions of the Commission, in accordance with the powers conferred upon it, shall forthwith become binding and may be put into immediate execution without further proceedings.

15. The Commission shall issue to each of the interested Powers in such form as the Commission shall fix:

(1) a certificate stating that it holds for the account of the said Power bonds of the issues mentioned above, the said certificate on the demand of the Power concerned being divisible into a number of parts not exceeding five;

(2) from time to time certificates stating the goods delivered by Hungary on account of her reparation debt which it holds for the account of the said Power.

Such certificates shall be registered and, upon notice to the Commission, may be transferred by endorsement.

When bonds are issued for sale or negotiation, and when goods are delivered by the Commission, certificates to an equivalent value must be withdrawn.

16. Interest shall be debited to Hungary as from May 1, 1921, in respect of her debt as determined by the Commission, after allowing for sums already covered by cash payments or their equivalent by bonds issued to the Commission or under Article 173.

The rate of interest shall be 5 per cent., unless the Commission shall determine at some future time that circumstances justify a variation of this rate.

The Commission, in fixing on May 1, 1921, the total amount of the debt of

Hungary, may take account of interest due on sums arising out of reparation and of material damage as from November 11, 1918, or any later date that may be fixed by the Commission, up to May 1, 1921.

17. In case of default by Hungary in the performance of any obligation under this part of the present treaty, the Commission will forthwith give notice of such default to each of the interested Powers and may make such recommendations as to the action to be taken in consequence of such default as it may think necessary.

18. The measures which the Allied and Associated Powers shall have the right to take, in the case of voluntary default by Hungary, and which Hungary agrees not to regard as acts of war, may include economic and financial prohibitions and reprisals, and in general such other measures as the respective Governments may determine to be necessary in the circumstances.

19. Payments required to be made in gold or its equivalent on account of the proved claims of the Allied and Associated Powers may at any time be accepted by the Commission in the form of chattels, properties, commodities, businesses, rights, concessions within or without Hungarian territory, ships, bonds, shares or securities of any kind or currencies of Hungary or other States, the value of such substitutes for gold being fixed at a fair and just amount by the Commission itself.

20. The Commission in fixing or accepting payment in specified properties or rights shall have due regard for any legal or equitable interests of the Allied and Associated Powers or of neutral Powers or of their nationals therein.

21. No member of the Commission shall be responsible, except to the Government appointing him, for any action or omission as such member. No one of the Allied and Associated Governments assumes any responsibility in respect of any other Government.

22. Subject to the provisions of the present treaty this annex may be amended by the unanimous decision of the Governments represented from time to time upon the Commission.

23. When all the amounts due from Hungary and her allies under the present treaty or the decisions of the Commission have been discharged, and all sums received, or their equivalents, have been distributed to the Powers interested, the Commission shall be dissolved.

ANNEX III.

1. Hungary recognizes the right of the Allied and Associated Powers to the replacement ton for ton (gross tonnage) and class for class of all merchant ships and fishing boats lost or damaged owing to the war.

Nevertheless and in spite of the fact that the tonnage of Hungarian shipping at present in existence is much less than that lost by the Allied and Associated Powers in consequence of the aggression of Austria-Hungary and her allies, the right thus recognized will be enforced on the Hungarian ships and boats under the following conditions:

The Hungarian Government on behalf of themselves, and so as to bind all other persons interested, cede to the Allied and Associated Governments the

property in all merchant ships and fishing boats belonging to nationals of the former Kingdom of Hungary.

2. The Hungarian Government will, within two months of the coming into force of the present treaty, deliver to the Reparation Commission all the ships and boats mentioned in paragraph 1.

3. The ships and boats in paragraph 1 include all ships and boats which (a) fly or may be entitled to fly the Austro-Hungarian merchant flag and are registered in a port of the former Kingdom of Hungary, or (b) are owned by any national, company or corporation of the former Kingdom of Hungary, or by any company or corporation belonging to a country other than an Allied or Associated country and under the control or direction of nationals of the former Kingdom of Hungary, or (c) are now under construction (1) in the former Kingdom of Hungary, (2) in other than Allied or Associated countries for the account of any national, company or corporation of the former Kingdom of Hungary.

4. For the purpose of providing documents of title for the ships and boats to be handed over as above mentioned, the Hungarian Government will:

(a) deliver to the Reparation Commission in respect of each vessel a bill of sale or other document of title evidencing the transfer to the Commission of the entire property in the vessel, free from all encumbrances, charges and liens of all kinds, as the Commission may require;

(b) take all measures that may be indicated by the Reparation Commission for insuring that the ships themselves shall be placed at its disposal.

5. Hungary undertakes to restore in kind and in normal condition of upkeep to the Allied and Associated Powers within two months of the coming into force of the present treaty in accordance with procedure to be laid down by the Reparation Commission any boats and other movable appliances belonging to inland navigation which, since July 28, 1914, have by any means whatever come into her possession or into the possession of her nationals and which can be identified.

With a view to make good the loss in inland navigation tonnage from whatever cause arising which has been incurred during the war by the Allied and Associated Powers, and which cannot be made good by means of the restitution prescribed above, Hungary agrees to cede to the Reparation Commission a portion of the Hungarian river fleet up to the amount of the loss mentioned above, provided that such cession shall not exceed 20 per cent. of the river fleet as it existed on November 3, 1918.

The conditions of this cession shall be settled by the arbitrators referred to in Article 284, Part XII (Ports, Waterways and Railways) of the present treaty, who are charged with the settlement of difficulties relating to the apportionment of river tonnage resulting from the new international régime applicable to certain river systems or from the territorial changes affecting those systems.

6. Hungary agrees to take any measures that may be indicated to her by the Reparation Commission for obtaining a full title to the property in all ships which have, during the war, been transferred or are in process of transfer to neutral flags without the consent of the Allied and Associated Governments.

7. Hungary waives all claims of any description against the Allied and Associated Governments and their nationals in respect of the detention, employment, loss or damage of any Hungarian ships or boats.

8. Hungary renounces all claims to vessels or cargoes sunk by or in consequence of naval action and subsequently salvaged in which any of the Allied or Associated Governments or their nationals may have any interest either as owners, charterers, insurers or otherwise, notwithstanding any decree of condemnation which may have been made by a prize court of the former Austro-Hungarian Monarchy or of its allies.

ANNEX IV.

1. The Allied and Associated Powers require and Hungary undertakes that in part satisfaction of her obligations expressed in this part she will, as hereinafter provided, devote her economic resources directly to the physical restoration of the invaded areas of the Allied and Associated Powers to the extent that these Powers may determine.

2. The Allied and Associated Governments may file with the Reparation Commission lists showing:

(a) animals, machinery, rolling-stock, equipment, tools and like articles of a commercial character which have been seized, consumed or destroyed by Hungary, or destroyed in direct consequence of military operations, and which such Governments, for the purpose of meeting immediate and urgent needs, desire to have replaced by animals and articles of the same nature which are in being in Hungarian territory at the date of the coming into force of the present treaty;

(b) reconstruction materials (such as stones, bricks, refractory bricks, tiles, wood, window glass, steel, lime, cement), machinery, heating apparatus, furniture and like articles of a commercial character, which the said Governments desire to have produced and manufactured in Hungary and delivered to them to permit of the restoration of the invaded areas.

3. The lists relating to the articles mentioned in paragraph 2 (a) above shall be filed within three months after the coming into force of the present treaty.

The lists shall contain all such details as are customary in commercial contracts dealing with the subject-matter, including specifications, dates of delivery (but not extending over more than four years) and places of delivery, but not prices or value, which shall be fixed as hereinafter provided by the Commission.

4. Immediately upon the filing of such lists with the Commission, the Commission shall consider the amount and number of the materials and animals mentioned in the lists provided for above which are to be required of Hungary.

In reaching a decision on this matter the Commission shall take into account such domestic requirements of Hungary as it deems essential for the maintenance of Hungarian social and economic life, the prices and dates at which similar articles can be obtained in the Allied and Associated countries as compared with those to be fixed for Hungarian articles, and the general interest of the Allied and Associated Governments that the industrial life of Hungary be

not so disorganized as to affect adversely the ability of Hungary to perform the other acts of reparation stipulated for.

Machinery, rolling-stock, equipment, tools and like articles of a commercial character in actual industrial use are not, however, to be demanded of Hungary unless there is no free stock of such articles respectively which is not in use and is available, and then not in excess of 30 per cent. of the quantity of such articles in use in any one establishment or undertaking.

The Commission shall give representatives of the Hungarian Government an opportunity and a time to be heard as to their capacity to furnish the said materials, articles and animals.

The decision of the Commission shall thereupon and at the earliest possible moment be communicated to the Hungarian Government and to the several interested Allied and Associated Governments.

The Hungarian Government undertakes to deliver the materials, articles and animals as specified in the said communication, and the interested Allied and Associated Governments severally agree to accept the same, providing they conform to the specification given or are not, in the judgment of the Commission, unfit to be utilized in the work of reparation.

5. The Commission shall determine the value to be attached to the materials, articles and animals to be delivered in accordance with the foregoing, and the Allied or Associated Power receiving the same agrees to be charged with such value, and the amount thereof shall be treated as a payment by Hungary to be divided in accordance with Article 167 of the present treaty.

In cases where the right to require physical restoration as above provided is exercised, the Commission shall ensure that the amount to be credited against the reparation obligation of Hungary shall be fair value for work done or material supplied by Hungary, and that the claim made by the interested Power in respect of the damage so repaired by physical restoration shall be discharged to the extent of the proportion which the damage thus repaired bears to the whole of the damage thus claimed for.

6. In order to meet the immediate needs of the countries whose livestock has been seized, consumed or destroyed, the Allied and Associated Powers may present to the Reparation Commission immediately after the coming into force of the present treaty lists of the livestock which they desire to have delivered to them within three months from the coming into force of the present treaty, as an immediate advance on account of the animals referred to in paragraph 2 above.

The Reparation Commission shall decide in what numbers such livestock shall be delivered within the above period of three months, and Hungary agrees to make such deliveries in accordance with the decisions of the Commission.

The Commission will distribute the livestock so delivered between the Powers concerned, taking into account the immediate needs of each of these Powers and the extent to which these needs have been met by the treaties concluded between the Allied and Associated Powers on the one hand and Austria and Bulgaria on the other hand.

The animals delivered shall be of average health and condition.

If the animals so delivered cannot be identified as animals taken away or seized, the value of such animals shall be credited against the reparation obligations of Hungary in accordance with paragraph 5 of this annex.

ANNEX V.

1. Hungary shall give, as partial reparation, to the Allied and Associated Governments severally an option during the five years following the coming into force of the present treaty for the annual delivery of the raw materials hereinafter enumerated, the amounts delivered to bear the same relation to their annual importations of these materials before the war from Austria-Hungary as the resources of Hungary as now delimited by the present treaty bear to the resources before the war of the former Austro-Hungarian Monarchy:

Timber and timber manufactures;

Iron and iron alloys.

Hungary shall also give, as partial reparation, to the Allied and Associated Powers an option for the annual delivery during the five years following the coming into force of the present treaty of a quantity of steam coal from the Pecs mine. This quantity will be periodically determined by the Reparation Commission, which will dispose of it for the benefit of the Serb-Croat-Slovene State in conditions fixed by the Commission.

2. The price paid for the products referred to in the preceding paragraph shall be the same as the price paid by Hungarian nationals under the same conditions of shipment to the Hungarian frontier and shall be subject to any advantages which may be accorded similar products furnished to Hungarian nationals.

3. The foregoing options shall be exercised through the intervention of the Reparation Commission, which, subject to the specific provisions hereof, shall have power to determine all questions relative to procedure and qualities and quantities of products and the times and modes of delivery and payment. In giving notice to the Hungarian Government of the foregoing options, the Commission shall give at least 120 days notice of deliveries to be made after July 1, 1920, and at least 30 days notice of deliveries to be made between the coming into force of the present treaty and July 1, 1920. If the Commission shall determine that the full exercise of the foregoing options would interfere unduly with the industrial requirements of Hungary, the Commission is authorized to postpone or to cancel deliveries and in so doing to settle all questions of priority.

ANNEX VI.

Hungary renounces on her own behalf and on behalf of her nationals in favor of Italy all rights, titles or privileges of whatever nature in any submarine cables or portions of cables connecting Italian territory, including any territories which may be assigned to Italy in accordance with the present treaty.

Hungary also renounces on her own behalf and on behalf of her nationals in favor of the Principal Allied and Associated Powers all rights, titles and privileges of whatever nature in the submarine cables, or portions thereof,

connecting the territories ceded by Hungary under the terms of the present treaty to the various Allied and Associated Powers.

The States concerned shall provide for the upkeep of the installations and the proper working of the said cables.

As regards the cable from Trieste to Corfu, the Italian Government shall enjoy in its relations with the company owning this cable the same position as that held by the Austro-Hungarian Government.

The value of the cables or portions of cables referred to in the first two paragraphs of the present annex, calculated on the basis of the original cost, less a suitable allowance for depreciation, shall be credited to Hungary in the reparation account.

SECTION II.—SPECIAL PROVISIONS.

ARTICLE 175.

In carrying out the provisions of Article 168 Hungary undertakes to surrender to each of the Allied and Associated Powers respectively all records, documents, objects of antiquity and of art, and all scientific and bibliographical material taken away from the invaded territories, whether they belong to the State or to provincial, communal, charitable or ecclesiastical administrations or other public or private institutions.

ARTICLE 176.

Hungary shall in the same manner restore objects of the same nature as those referred to in Article 175 which may have been taken away since June 1, 1914, from the ceded territories, with the exception of objects bought from private owners.

The Reparation Commission will apply to these objects the provisions of Article 191, Part IX (Financial Clauses), of the present treaty, if these are appropriate.

ARTICLE 177.

Hungary will give up to each of the Allied and Associated Governments respectively all the records, documents and historical material possessed by public institutions which may have a direct bearing on the history of the ceded territories and which have been removed since January 1, 1868. This last-mentioned period as far as concerns Italy, shall be extended to the date of the proclamation of the kingdom (1861).

With regard to all objects or documents of an artistic, archæological, scientific or historic character forming part of collections which formerly belonged to the Government or the Crown of the Austro-Hungarian Monarchy and are not otherwise provided for in the present treaty, Hungary undertakes:

(a) to negotiate, when required, with the States concerned for an amicable arrangement whereby any portion thereof or any objects or documents belonging thereto which ought to form part of the intellectual patrimony of the said States may be returned to their country of origin on terms of reciprocity, and

(b) for twenty years, unless a special arrangement is previously arrived

at, not to alienate or disperse any of the said collections or to dispose of any of the above objects, but at all times to ensure their safety and good condition and to make them available, together with inventories, catalogues and administrative documents relating to the said collections, at all reasonable times to students who are nationals of any of the Allied and Associated Powers.

Reciprocally, Hungary will be entitled to apply to the said States, particularly to Austria, in order to negotiate, in the conditions mentioned above, the necessary arrangements for the return to Hungary of the collections, documents and objects referred to above, to which the guarantees referred to in paragraph (b) will apply.

ARTICLE 178.

The new States arising out of the former Austro-Hungarian Monarchy and the States which receive part of the territory of that Monarchy undertake to give up to the Hungarian Government the records, documents and material dating from a period not exceeding twenty years which have a direct bearing on the history or administration of the territory of Hungary and which may be found in the territories transferred.

ARTICLE 179.

Hungary acknowledges that she remains bound, as regards Italy, to execute in full the obligations referred to in Article 15 of the Treaty of Zurich of November 10, 1859, in Article 18 of the Treaty of Vienna of October 3, 1866, and in the Convention of Florence of July 14, 1868, concluded between Italy and Austria-Hungary, in so far as the articles referred to have not in fact been executed in their entirety, and in so far as the documents and objects in question are situated in the territory of Hungary or her allies.

PART IX.—FINANCIAL CLAUSES

ARTICLE 180.

Subject to such exceptions as the Reparation Commission may make, the first charge upon all the assets and revenues of Hungary shall be the cost of reparation and all other costs arising under the present treaty or any treaties or agreements supplementary thereto, or under arrangements concluded between Hungary and the Allied and Associated Powers during the armistice signed on November 3, 1918.

Up to May 1, 1921, the Hungarian Government shall not export or dispose of, and shall forbid the export or disposal of, gold without the previous approval of the Allied and Associated Powers acting through the Reparation Commission.

ARTICLE 181.

There shall be paid by Hungary, subject to the fifth paragraph of this article, the total cost of all armies of the Allied and Associated Governments occupying territory within the boundaries of Hungary as defined by the present

treaty from the date of the signature of the armistice of November 3, 1918, including the keep of men and beasts, lodging and billeting, pay and allowances, salaries and wages, bedding, heating, lighting, clothing, equipment, harness and saddlery, armament and rolling-stock, air services, treatment of sick and wounded, veterinary and remount services, transport services of all sorts (such as by rail, sea, or river, motor-lorries), communications and correspondence, and, in general, the cost of all administrative or technical services the working of which is necessary for the training of troops and for keeping their numbers up to strength and preserving their military efficiency.

The cost of such liabilities under the above heads, so far as they relate to purchases or requisitions by the Allied and Associated Governments in the occupied territory, shall be paid by the Hungarian Government to the Allied and Associated Governments in crowns or any legal currency of Hungary which may be substituted for crowns.

In cases where an Allied Government, in order to make such purchases or requisitions in the occupied territory, has incurred expenditure in a currency other than crowns, such expenditure shall be reimbursed in any legal Hungarian currency at the rate of exchange current at the date of reimbursement, or at an agreed rate.

All other of the above costs shall be paid in the currency of the country to which the payment is due.

The above stipulations will apply to military operations carried out after November 3, 1918, to such extent as the Reparation Commission shall consider necessary, and the Reparation Commission shall have, so far as these operations are concerned, full power to decide all questions, especially those relating to:

(a) the costs of the armies engaged in such operations, particularly the determination of their nature and amount, the portion of such costs to be charged to Hungary, the manner and currency in which such portion is to be paid, and any possible arrangements as regards preference or priority in connection with such payment;

(b) the requisitioning in the course of the operations of property and securities of every description, particularly the possible classification of any portion of such property or securities as war booty, the valuation of such property or securities, the extent to which restitution should be made, debiting on the reparation account of the sum representing the property or securities not restored against the Power in possession thereof, the method of payment (in cash or as a set-off on the reparation account) of the sums so debited, and the dates on which such payment or set-off is to be made.

ARTICLE 182.

Hungary confirms the surrender of all material handed over or to be handed over to the Allied and Associated Powers in accordance with the armistice of November 3, 1918, or any supplementary agreements, and recognizes the title of the Allied and Associated Powers to such material.

There shall be credited to Hungary, against the sums due from her to the Allied and Associated Powers for reparation, the value, as assessed by the Repa-

ration Commission, of such of the above material for which, as having non-military value, credit should, in the judgment of the Reparation Commission, be allowed to Hungary.

Property belonging to the Allied and Associated Governments or their nationals restored or surrendered under the armistice agreements in specie shall not be credited to Hungary.

ARTICLE 183.

The priority of the charges established by Article 180 shall, subject to the qualifications made below, be as follows:

(a) the cost of the armies of occupation, as defined under Article 181, during the armistice;

(b) the cost of any armies of occupation, as defined under Article 181, after the coming into force of the present treaty;

(c) the cost of reparation arising out of the present treaty or any treaties or conventions supplementary thereto;

(d) the cost of all other obligations incumbent on Hungary under the armistice agreements or under the present treaty or any treaties or conventions supplementary thereto.

The payment for such supplies of food and raw material for Hungary and such other payments as may be judged by the Principal Allied and Associated Powers to be essential to enable Hungary to meet her obligations in respect of reparation shall have priority to the extent and upon the conditions which have been or may be determined by the Governments of the said Powers.

The payment of the costs of the armies employed in the operations effected after November 3, 1918, shall have priority to the extent and upon the conditions fixed by the Reparation Commission in accordance with the provisions of Article 181.

ARTICLE 184.

The right of each of the Allied and Associated Powers to dispose of enemy assets and property within its jurisdiction at the date of the coming into force of the present treaty is not affected by the foregoing provisions.

ARTICLE 185.

Nothing in the foregoing provisions shall prejudice in any manner charges or mortgages lawfully effected in favor of the Allied and Associated Powers or their nationals respectively before the date at which a state of war existed between Austria-Hungary and the Allied or Associated Power concerned by the former Hungarian Government or by nationals of the former Kingdom of Hungary on assets in their ownership at that date, except in so far as variations of such charges or mortgages are specifically provided for under the terms of the present treaty or any treaties or conventions supplementary thereto.

ARTICLE 186.

1. Each of the States to which territory of the former Austro-Hungarian Monarchy is transferred, and each of the States arising from the dismemberment of that Monarchy, including Hungary, shall, in so far as territory is

assigned to it in accordance with the present treaty, assume responsibility for a portion of the debt of the former Hungarian Government which is specifically secured on railways or other property, and which was in existence on July 28, 1914. The portion to be so assumed by each State shall be such portion as in the opinion of the Reparation Commission represents the secured debt in respect of the railways and other properties transferred to that State under the terms of the present treaty or any treaties or agreements supplementary thereto.

The amount of the liability in respect of secured debt so assumed by each State other than Hungary shall be valued by the Reparation Commission on such basis as the Commission may consider equitable, and the value so ascertained shall be deducted from the amount payable by the State in question to Hungary in respect of property of the former or existing Hungarian Government which the State acquires with the territory. Each State shall be solely responsible in respect of that portion of the secured debt for which it assumes responsibility under the terms of this article, and holders of the debt for which responsibility is assumed by States other than Hungary shall have no recourse against the Government of any other State.

Any property which was specifically pledged to secure any debt referred to in this article shall remain specifically pledged to secure the new debt. But in case the property so pledged is situated as the result of the present treaty in more than one State, that portion of the property which is situated in a particular State shall constitute the security only for that part of the debt which is apportioned to that State, and not for any other part of the debt.

For the purposes of the present article there shall be regarded as secured debt payments due by the former Hungarian Government in connection with the purchase of railways or similar property; the distribution of the liability for such payments will be determined by the Reparation Commission in the same manner as in the case of secured debt.

Debts for which the responsibility is transferred under the terms of this article shall be expressed in terms of the currency of the State assuming the responsibility, if the original debt was expressed in terms of Austro-Hungarian paper currency. For the purposes of this conversion the currency of the assuming State shall be valued in terms of Austro-Hungarian paper kronen at the rate at which those kronen were exchanged into the currency of the assuming State by that State when it first substituted its own currency for Austro-Hungarian kronen. The basis of this conversion of the currency unit in which the bonds are expressed shall be subject to the approval of the Reparation Commission, which shall, if it thinks fit, require the State effecting the conversion to modify the terms thereof. Such modification shall only be required if, in the opinion of the Commission, the foreign exchange value of the currency unit or units substituted for the currency unit in which the old bonds are expressed is substantially less at the date of the conversion than the foreign exchange value of the original currency unit.

If the original Hungarian debt was expressed in terms of a foreign currency or foreign currencies, the new debt shall be expressed in terms of the same currency or currencies.

If the original Hungarian debt was expressed in terms of Austro-Hungarian gold coin, the new debt shall be expressed in terms of equivalent amounts of pounds sterling and gold dollars of the United States of America, the equivalents being calculated on the basis of the weight and the fineness of gold of the three coins as enacted by law on January 1, 1914.

Any foreign exchange options, whether at fixed rates or otherwise, embodied explicitly or implicitly in the old bonds shall be embodied in the new bonds also.

2. Each of the States to which territory of the former Austro-Hungarian Monarchy is transferred, and each of the States arising from the dismemberment of that Monarchy, including Hungary, shall assume responsibility for a portion of the unsecured bonded debt of the former Hungarian Government as it stood on July 28, 1914, calculated on the basis of the ratio between the average for the three financial years 1911, 1912, 1913, of such revenues of the territory distributed in accordance with the present treaty and the average for the same years of such revenues of the whole of the former Hungarian territories as in the judgment of the Reparation Commission are best calculated to represent the financial capacity of the respective territories. In making the above calculation, the revenues of Bosnia and Herzegovina shall not be included. Nevertheless, when there existed before July 28, 1914, financial agreements relating to the unsecured bonded debt of the former Hungarian Government, the Reparation Commission may take such agreements into consideration when effecting the division of this debt between the States mentioned above.

The responsibilities in respect of bonded debt to be assumed under the terms of this article shall be discharged in the manner laid down in the annex hereto.

The Hungarian Government shall be solely responsible for all the liabilities of the former Hungarian Government incurred by it prior to July 28, 1914, other than those evidenced by the bonds, bills, securities, and currency notes which are specifically provided for under the terms of the present treaty.

Neither the provisions of this article nor the provisions of the annex hereto shall apply to securities of the former Hungarian Government deposited with the Austro-Hungarian Bank as security for the currency notes issued by that bank.

ANNEX.

The amount of the former unsecured Hungarian Government bonded debt, the responsibility for which is to be distributed under the provisions of Article 186, shall be the amount of that debt as it stood on July 28, 1914.

Each State assuming responsibility for the former unsecured Hungarian Government bonded debt shall, within three months of the coming into force of the present treaty, if it has not already done so, stamp with the stamp of its own Government all the bonds of that debt existing in its own territory. The distinguishing numbers of the bonds so stamped shall be recorded and shall be furnished, together with the other records of the stamping, to the Reparation Commission.

Holders of bonds within the territory of a State which is required to stamp old Hungarian bonds under the terms of this annex shall, from the date of

the coming into force of the present treaty, be creditors in respect of these bonds of that State only, and they shall have no recourse against the Government of any other State.

Each State which, under the terms of Article 186, is required to assume responsibility for a portion of the old unsecured Hungarian Government debt, and which has ascertained by means of stamping the old Hungarian bonds that the bonds of any particular issue of such old Hungarian bonds held within its territory were smaller in amount than the amount of that issue for which, in accordance with the assessment of the Reparation Commission, it is held responsible, shall deliver to the Reparation Commission new bonds equal in amount to the difference between the amount of the issue for which it is responsible and the amount of the same issue recorded as held within its own territory. Such new bonds shall be of such denominations as the Reparation Commission may require. They shall carry the same rights as regards interest and amortization as the old bonds for which they are substituted, and in all other respects the conditions of the new bonds shall be fixed subject to the approval of the Reparation Commission.

If the original bond was expressed in terms of Austro-Hungarian paper currency, the new bond by which it is replaced shall be expressed in terms of the currency of the State issuing the new bond, and for the purpose of this currency conversion, the currency of the new State shall be valued in terms of Austro-Hungarian paper kronen at the rate at which those kronen were exchanged for the currency of the new State by that State when it first substituted its own currency for Austro-Hungarian paper kronen. The basis of this conversion of the currency unit in which the bonds are expressed shall be subject to the approval of the Reparation Commission, which shall, if it thinks fit, require the State effecting the conversion to modify the terms thereof. Such modification shall only be required if, in the opinion of the Commission, the foreign exchange value of the currency unit or units substituted for the currency unit in which the old bonds are expressed is substantially less at the date of the conversion than the foreign exchange value of the original currency unit.

If the original bond was expressed in terms of a foreign currency or foreign currencies, the new bond shall be expressed in terms of the same currency or currencies. If the original bond was expressed in terms of Austro-Hungarian gold coin, the new bond shall be expressed in terms of equivalent amounts of pounds sterling and gold dollars of the United States of America, the equivalents being calculated on the basis of the weight and fineness of gold of the three coins as enacted by law on January 1, 1914.

Any foreign exchange options, whether at fixed rates or otherwise, embodied explicitly or implicitly in the old bonds shall be embodied in the new bonds also.

Each State which under the terms of Article 186 is required to assume responsibility for a portion of the old unsecured Hungarian Government debt, which has ascertained by means of stamping the old Hungarian bonds that the bonds of any particular issue of such old Hungarian bonds held within its territory were larger in amount than the amount of that issue for which it is held responsible in accordance with the assessment of the Reparation Commission,

shall receive from the Reparation Commission its due proportionate share of each of the new issues of bonds issued in accordance with the provisions of this annex.

Holders of unsecured bonds of the old Hungarian Government debt held outside the boundaries of the States to which territory of the former Austro-Hungarian Monarchy is transferred, or States arising out of the dismemberment of that Monarchy, including Hungary, shall deliver through the agency of their respective Governments to the Reparation Commission the bonds which they hold, and in exchange therefor the Reparation Commission shall deliver to them certificates entitling them to their due proportionate share of each of the new issues of bonds corresponding to and issued in exchange for their surrendered bonds under the provisions of this annex.

The share of each State or private holder entitled to a share in any new issue of bonds issued in accordance with the provisions of this annex shall bear such proportion to the total amount of bonds of that new issue as the holding of the State or private owner in question of the old issue of bonds bears to the total amount of the old issue presented to the Reparation Commission for exchange into new bonds in accordance with the provisions of this annex.

The Reparation Commission shall, if it think fit, arrange with the holders of the new bonds provided for by this annex a consolidation loan of each debtor State, the bonds of which loan shall be substituted for the various different issues of new bonds on such terms as may be agreed upon by the Commission and the bondholders.

The State assuming liability for any bond of the former Hungarian Government shall assume any liability attaching to the bond in respect of unpaid coupons or sinking fund instalments accrued since the date of the coming into force of the present treaty.

In addition to the former unsecured Hungarian Government bonded debt to be divided as above, there shall also be divided among the several States, in the same proportion, the amount of the former unsecured Austrian Government bonded debt which represents the liability of the former Hungarian Government for that debt, as provided by the additional convention relating to the contribution of the countries of the Sacred Hungarian Crown to the charges of the general debt of the Austro-Hungarian State approved by the Austro-Hungarian Law of December 30, 1907, B.L.L., No. 278.

Each State which, in virtue of the present treaty, assumes responsibility for a part of this Austrian debt shall deliver to the Reparation Commission new securities for an amount equal to the part of the above-mentioned Austrian debt which is attributed to it.

The terms of these securities shall be fixed by the Reparation Commission. They shall be such as to represent as exactly as possible the terms of the former Austrian securities for which these securities are to be substituted. The new securities will be delivered to the States or holders of Austrian securities, who will have the right to a portion of each of the new issues made in accordance with the provisions of the annex to Article 203 of the Treaty with Austria.

ARTICLE 187.

1. In case the new boundaries of any States, as laid down by the present treaty, shall divide any local area which was a single unit for borrowing purposes and which had a legally constituted public debt, such debt shall be divided between the new divisions of the area in a proportion to be determined by the Reparation Commission in accordance with the principles laid down for the reapportionment of Government debts under Article 186 of the present treaty, and the responsibility so assumed shall be discharged in such a manner as the Reparation Commission shall determine.

2. The public debt of Bosnia and Herzegovina shall be regarded as the debt of a local area and not as part of the public debt of the former Austro-Hungarian Monarchy.

ARTICLE 188.

Within two months of the coming into force of the present treaty, each one of the States to which territory of the former Austro-Hungarian Monarchy is transferred in accordance with the present treaty, and each one of the States arising from the dismemberment of that Monarchy, including Hungary, shall, if it has not already done so, stamp with the stamp of its own Government the securities of various kinds which are separately provided for, representing the bonded war debt of the former Hungarian Government as legally constituted prior to October 31, 1918, and existing in their respective territories.

The securities thus stamped shall be withdrawn and replaced by certificates, their distinguishing numbers shall be recorded, and any securities withdrawn, together with the documents recording the transaction, shall be sent to the Reparation Commission.

The stamping and replacement of a security by a certificate under the provisions of this article shall not imply that the State so stamping and replacing a security thereby assumes or recognizes any obligation in respect of it, unless the State in question desires that the stamping and replacement should have this implication.

The aforementioned States, with the exception of Hungary, shall be free from any obligation in respect of the war debt of the former Hungarian Government, wherever that debt may be held, but neither the Governments of those States nor their nationals shall have recourse under any circumstances whatever against any other States, including Hungary, in respect of the war debt bonds of which they or their nationals are the beneficial owners.

The war debt of the former Hungarian Government which was prior to the signature of the present treaty in the beneficial ownership of nationals or Governments of States other than those to which territory of the former Austro-Hungarian Monarchy is assigned in accordance with the present treaty shall be a charge upon the Hungarian Government only, and no one of the other States aforementioned shall be held responsible for any part thereof.

The provisions of this article shall not apply to the securities of the former Hungarian Government deposited by that Government with the Austro-Hungarian Bank as security for the currency notes of the said bank.

The Hungarian Government shall be solely responsible for all liabilities of the former Hungarian Government incurred during the war, other than those evidenced by the bonds, bills, securities and currency notes which are specifically provided for under the terms of the present treaty.

ARTICLE 189.

1. Within two months of the coming into force of the Treaty with Austria, each one of the States to which territory of the former Austro-Hungarian Monarchy is transferred, and each one of the States arising from the dismemberment of that Monarchy, including Austria and Hungary, shall, if it has not already done so, stamp with the stamp of its own Government the currency notes of the Austro-Hungarian Bank existing in its territory.

2. Within twelve months of the coming into force of the Treaty with Austria, each one of the States to which territory of the former Austro-Hungarian Monarchy is transferred, and each one of the States arising from the dismemberment of that Monarchy, including Austria and Hungary, shall replace, as it may think fit, the stamped notes referred to above by its own or a new currency.

3. The Governments of such States as have already converted the currency notes of the Austro-Hungarian Bank by stamping or by the issue of their own or a new currency, and in carrying out this operation have withdrawn, without stamping them, a portion or all of the currency notes circulating in their territory, shall either stamp the notes so withdrawn or hold them at the disposal of the Reparation Commission.

4. Within fourteen months of the coming into force of the Treaty with Austria, those Governments which have replaced notes of the bank by their own or new currency, in accordance with the provisions of this article, shall transfer to the Reparation Commission all the notes, stamped or unstamped, of the bank which have been withdrawn in the course of this replacement.

5. All notes transferred to the Reparation Commission under the provisions of this article shall be dealt with by that Commission in accordance with the provisions of the annex hereto.

6. The Austro-Hungarian Bank shall be liquidated as from the day succeeding the day of the signature of the Treaty with Austria.

7. The liquidation shall be conducted by receivers specially appointed for that purpose by the Reparation Commission. In conducting the liquidation of the bank, the receivers shall follow the rules laid down in the statutes or other valid instruments regulating the constitution of the bank, subject, however, to the special provisions of this article. In the case of any doubt arising as to the interpretation of the rules concerning the liquidation of the bank, whether laid down in these articles and annexes or in the statutes of the bank, the decision of the Reparation Commission or any arbitrator appointed by it for that purpose shall be final.

8. The currency notes issued by the bank subsequent to October 27, 1918, shall have a claim on the securities issued by the former or existing Austrian and Hungarian Governments and deposited with the bank by those Govern-

ments as security for these notes, but they shall not have a claim on any other assets of the bank.

9. The currency notes issued by the bank on or prior to October 27, 1918 (in so far as they are entitled to rank at all in conformity with this article), shall all rank equally as claims against all the assets of the bank, other than the Austrian and Hungarian Government securities deposited as security for the various note issues.

10. The securities deposited by the former or existing Austrian and Hungarian Governments with the bank as security for the currency notes issued on or prior to October 27, 1918, shall be cancelled in so far as they represent the notes converted in the territory of the former Austro-Hungarian Monarchy as it existed on July 28, 1914, by States to which territory of that Monarchy is transferred or by States arising from the dismemberment of that Monarchy, including Austria and Hungary.

11. The remainder of the securities deposited by the former or existing Austrian and Hungarian Governments with the bank as security for the currency notes issued on or prior to October 27, 1918, shall be retained in force as security for, and in so far as they represent, the notes issued on or prior to October 27, 1918, which on June 15, 1919, were outside the limits of the former Austro-Hungarian Monarchy, that is to say, firstly, all notes of this description which are presented to the Reparation Commission in accordance with paragraph 4 of this article, and secondly all notes of this description which may be held elsewhere and are presented to the receivers of the bank in accordance with the annex hereto.

12. No claims on account of any other currency notes issued on or prior to October 27, 1918, shall rank either against the general assets of the bank or against the securities deposited by the former or existing Austrian and Hungarian Governments as security for the notes, and any balance of such securities remaining after the amount of securities mentioned in paragraphs 10 and 11 has been calculated and deducted shall be cancelled.

13. All securities deposited by the former or existing Austrian and Hungarian Governments with the bank as security for currency note issues and which are maintained in force shall be the obligations respectively of the Governments of Austria and Hungary only and not of any other States.

14. The holders of currency notes of the Austro-Hungarian Bank shall have no recourse against the Governments of Austria or Hungary or any other Government in respect of any loss which they may suffer as the result of the liquidation of the bank.

15. Nevertheless, if any difficulties should arise owing to the date of the signature of the present treaty, the dates at which any of the operations laid down by this article are to be carried out may be altered by the Reparation Commission.

ANNEX.

1. The respective Governments, when transmitting to the Reparation Commission all the currency notes of the Austro-Hungarian Bank withdrawn by

them from circulation in accordance with the terms of Article 189, shall also deliver to the Commission all the records showing the nature and amounts of the conversions which they have effected.

2. The Reparation Commission, after examining the records, shall deliver to the said Governments separate certificates stating the total amount of currency notes which the Governments have converted

(a) within the boundaries of the former Austro-Hungarian Monarchy as it existed on July 28, 1914,

(b) elsewhere.

These certificates will entitle the bearer to lodge a claim with the receivers of the bank for currency notes thus converted which are entitled to share in the assets of the bank.

3. After the liquidation of the bank is completed, the Reparation Commission shall destroy the notes thus withdrawn.

4. No notes issued on or prior to October 27, 1918, wherever they may be held, will rank as claims against the bank unless they are presented through the Government of the country in which they are held.

ARTICLE 190.

Each one of the States to which territory of the former Austro-Hungarian Monarchy is transferred, and each one of the States arising from the dismemberment of that monarchy, including Hungary, shall deal as it thinks fit with the petty or token coinage of the former Austro-Hungarian Monarchy existing in its territory.

No such State shall have any recourse under any circumstances, on behalf either of itself or of its nationals, against any other State with regard to such petty or token coinage.

ARTICLE 191.

States to which territory of the former Austro-Hungarian Monarchy is transferred and States arising from the dismemberment of that monarchy shall acquire all property and possessions situated within their territories belonging to the former or existing Hungarian Government.

For the purposes of this article, the property and possessions of the former or existing Hungarian Government shall be deemed to include the property of the former Kingdom of Hungary and the interests of that Kingdom in the joint property of the Austro-Hungarian Monarchy, as well as all the property of the Crown and the private property of members of the former royal family of Austria-Hungary.

These States shall, however, have no claim to any property of the former or existing Government of Hungary situated outside their own respective territories.

The value of such property and possessions acquired by States other than Hungary shall be fixed by the Reparation Commission and placed by that Commission to the credit of Hungary and to the debit of the State acquiring such property on account of the sums due for reparation. The Reparation

Commission shall deduct from the value of the public property thus acquired an amount proportionate to the contribution in money, land, or material made directly by any province or commune or other autonomous local authority towards the cost of such property.

Without prejudice to Article 186 relating to secured debt, in the case of each State acquiring property under the provisions of this article, the amount placed to the credit of Hungary and to the debit of the said State in accordance with the preceding paragraph shall be reduced by the value of the amount of the liability in respect of the unsecured debt of the former Hungarian Government assumed by that State under the provisions of Article 186 which, in the opinion of the Reparation Commission, represents expenditure upon the property so acquired. The value shall be fixed by the Reparation Commission on such basis as the Commission may consider equitable.

Property of the former and existing Hungarian Government shall be deemed to include a share of the real property in Bosnia-Herzegovina of all descriptions for which, under Article 5 of the convention of February 26, 1909, the Government of the former Austro-Hungarian Monarchy paid £T.2,500,000 to the Ottoman Government. Such share shall be proportionate to the share which the former Kingdom of Hungary contributed to the above payment, and the value of this share, as assessed by the Reparation Commission, shall be credited to Hungary on account of reparation.

As exception to the above there shall be transferred without payment:

(1) the property and possessions of provinces, communes and other local autonomous institutions of the former Austro-Hungarian Monarchy, including those in Bosnia-Herzegovina which did not belong to the former Austro-Hungarian Monarchy;

(2) schools and hospitals the property of the former Austro-Hungarian Monarchy.

Further, any building or other property situated in the respective territories transferred to the States referred to in the first paragraph whose principal value lies in its historic interest and associations, and which formerly belonged to the Kingdom of Bohemia, the Kingdom of Croatia-Slavonia-Dalmatia, Bosnia-Herzegovina, the Republic of Ragusa, the Venetian Republic, or the Episcopal Principalities of Trient and Bressanone, may, subject to the approval of the Reparation Commission, be transferred to the Government entitled thereto without payment.

ARTICLE 192.

Hungary renounces, so far as she is concerned, all rights accorded to her or her nationals by treaties, conventions or agreements, of whatsoever kind, to representation upon or participation in the control or administration of commissions, state banks, agencies or other financial or economic organizations of an international character exercising powers of control or administration and operating in any of the Allied or Associated States, or in Germany, Austria, Bulgaria or Turkey, or in the dependencies of these States, or in the former Russian Empire.

ARTICLE 193.

1. Hungary engages to recognize the transfer provided for in Article 210 of the Treaty with Austria of the sum in gold deposited in the Austro-Hungarian Bank in the name of the Council of the Administration of the Ottoman Public Debt as security for the first issue of Turkish Government currency notes.

2. Without prejudice to Article 227, Part X (Economic Clauses) of the present treaty, Hungary renounces, so far as she is concerned, any benefit disclosed by the Treaties of Bucharest and Brest-Litovsk and by the treaties supplementary thereto.

Hungary undertakes to transfer either to Roumania or to the Principal Allied and Associated Powers, as the case may be, all monetary instruments, specie, securities and negotiable instruments or goods which she has received under the aforesaid treaties.

3. The sums of money and all securities, instruments and goods, of whatsoever nature, to be delivered, paid or transferred under the provisions of this article, shall be disposed of by the Principal Allied and Associated Powers in a manner hereafter to be determined by those Powers.

4. Hungary recognizes any transfer of gold provided for by Article 259 (5) of the Treaty of Peace concluded at Versailles on June 28, 1919, between the Allied and Associated Powers and Germany, and any transfer of claims provided for by Article 261 of that treaty.

ARTICLE 194.

Without prejudice to the renunciation of any rights by Hungary on behalf of herself or of her nationals in the other provisions of the present treaty, the Reparation Commission may, within one year from the coming into force of the present treaty, demand that Hungary become possessed of any rights and interests of her nationals in any public utility undertaking or in any concession operating in Russia, Turkey, Germany, Austria or Bulgaria, or in the possessions or dependencies of these States, or in any territory formerly belonging to Hungary or her allies to be transferred by Hungary or her allies to any State, or to be administered by a mandatory under any treaty entered into with the Allied and Associated Powers, and may require that the Hungarian Government transfer, within six months of the date of demand, to the Reparation Commission all such rights and interests and any similar rights and interests owned by the former or existing Hungarian Government.

Hungary shall be responsible for indemnifying her nationals so dispossessed, and the Reparation Commission shall credit Hungary on account of sums due for reparation with such sums in respect of the value of the transferred rights and interests as may be assessed by the Reparation Commission, and Hungary shall, within six months from the coming into force of the present treaty, communicate to the Reparation Commission all such rights and interests, whether already granted, contingent or not yet exercised, and shall renounce on behalf

of herself and her nationals in favor of the Allied and Associated Powers and such rights and interests which have not been so communicated.

ARTICLE 195.

Hungary undertakes to refrain from preventing or impeding such acquisition by the German, Austrian, Bulgarian or Turkish Governments of any rights and interests of German, Austrian, Bulgarian and Turkish nationals in public utility undertakings or concessions operating in Hungary as may be required by the Reparation Commission under the terms of the treaties of peace or supplementary treaties or conventions concluded between the Allied and Associated Powers and the German, Austrian, Bulgarian and Turkish Governments respectively.

ARTICLE 196.

Hungary undertakes to transfer to the Allied and Associated Powers any claims to payment or reparation by Germany, Austria, Bulgaria or Turkey in favor of the former or existing Hungarian Governments, and in particular any claims which may arise now or hereafter in the fulfilment of undertakings made from July 28, 1914, to the coming into force of the present treaty.

The value of such claims shall be assessed by the Reparation Commission, and shall be transferred to the Reparation Commission for the credit of Hungary on account of the sums due for reparation.

ARTICLE 197.

Any monetary obligation arising out of the present treaty and expressed in terms of gold kronen shall, unless some other arrangement is specifically provided for in any particular case under the terms of the present treaty or of treaties or conventions supplementary thereto, be payable at the option of the creditors in pounds sterling payable in London, gold dollars of the United States of America payable in New York, gold francs payable in Paris, or gold lire payable in Rome.

For the purposes of this article, the gold coins mentioned above shall be defined as being of the weight and fineness of gold as enacted by law on January 1, 1914.

ARTICLE 198.

Any financial adjustments, such as those relating to any banking and insurance companies, savings banks, postal savings banks, land banks, mortgage companies or other similar institutions, operating within the territory of the former Austro-Hungarian Monarchy, necessitated by the partition of that monarchy and the resettlement of public debts and currency provided for by these articles, shall be regulated by agreement between the various Governments concerned in such a manner as shall best secure equitable treatment to all the parties interested. In case the Governments concerned are unable to come to an agreement on any question arising out of this financial adjustment, or in case any Government is of opinion that its nationals have not received equitable treatment, the Reparation Commission shall, on the application of

any one of the Governments concerned, appoint an arbitrator or arbitrators, whose decision shall be final.

ARTICLE 199.

The Hungarian Government shall be under no liability in respect of civil or military pensions granted to nationals of the former Kingdom of Hungary who have been recognized as nationals of other States or who become so under the provisions of the present treaty.

PART X.—ECONOMIC CLAUSES.

SECTION I.—COMMERCIAL RELATIONS.

CHAPTER I.—CUSTOMS REGULATIONS, DUTIES AND RESTRICTIONS.

ARTICLE 200.

Hungary undertakes that goods the produce or manufacture of any one of the Allied or Associated States imported into Hungarian territory, from whatsoever place arriving, shall not be subjected to other or higher duties or charges (including internal charges) than those to which the like goods the produce or manufacture of any other such State or of any other foreign country are subject.

Hungary will not maintain or impose any prohibition or restriction on the importation into Hungarian territory of any goods the produce or manufacture of the territories of any one of the Allied or Associated States, from whatsoever place arriving, which shall not equally extend to the importation of the like goods the produce or manufacture of any other such State or of any other foreign country.

ARTICLE 201.

Hungary further undertakes that, in the matter of the régime applicable on importation, no discrimination against the commerce of any of the Allied and Associated States as compared with any other of the said States or any other foreign country shall be made, even by indirect means, such as customs regulations or procedure, methods of verification or analysis, conditions of payment of duties, tariff classification or interpretation, or the operation of monopolies.

ARTICLE 202.

In all that concerns exportation, Hungary undertakes that goods, natural products or manufactured articles, exported from Hungarian territory to the territories of any one of the Allied or Associated States, shall not be subjected to other or higher duties or charges (including internal charges) than those paid on the like goods exported to any other such State or to any other foreign country.

Hungary will not maintain or impose any prohibition or restriction on the exportation of any goods sent from her territory to any one of the Allied or

Associated States which shall not equally extend to the exportation of the like goods, natural products or manufactured articles, sent to any other such State or to any other foreign country.

ARTICLE 203.

Every favor, immunity, or privilege in regard to the importation, exportation or transit of goods granted by Hungary to any Allied or Associated State or to any other foreign country whatever shall simultaneously and unconditionally, without request and without compensation, be extended to all the Allied and Associated States.

ARTICLE 204.

By way of exception to the provisions of Article 270, Part XII (Ports, Waterways and Railways), products in transit by the ports which before the war were situated in territory of the former Austro-Hungarian Monarchy shall, for a period of three years from the coming into force of the present treaty, enjoy on importation into Hungary reductions of duty corresponding with and in proportion to those applied to such products under the Austro-Hungarian Customs Tariff of the year 1906, when imported by such ports.

ARTICLE 205.

Notwithstanding the provisions of Articles 200 to 203, the Allied and Associated Powers agree that they will not invoke these provisions to secure the advantage of any arrangements which may be made by the Hungarian Government with the Governments of Austria or of the Czecho-Slovak State for the accord of a special customs régime to certain natural or manufactured products which both originate in and come from those countries, and which shall be specified in the arrangements, provided that the duration of these arrangements does not exceed a period of five years from the coming into force of the present treaty.

ARTICLE 206.

During the first six months after the coming into force of the present treaty, the duties imposed by Hungary on imports from Allied and Associated States shall not be higher than the most favorable duties which were applied to imports into the former Austro-Hungarian Monarchy on July 28, 1914.

During a further period of thirty months after the expiration of the first six months this provision shall continue to be applied exclusively with regard to the importation of fruits (fresh and dried), fresh vegetables, olive oil, eggs, pigs and pork products, and live poultry, in so far as such products enjoyed at the above mentioned date (July 28, 1914) rates conventionalized by treaties with the Allied or Associated Powers.

ARTICLE 207.

1. Special agreements shall be made between Poland and the Czecho-Slovak State and Hungary as to the supply of coal, including lignite, foodstuffs and raw materials reciprocally.

2. Pending the conclusion of such agreements, but in no case during more than five years from the coming into force of the present treaty, the Czecho-Slovak State and Poland undertake that no export duty or other restrictions of any kind shall be imposed on the export to Hungary of coal or lignite up to a reasonable quantity to be fixed, failing agreement between the States concerned, by the Reparation Commission. In fixing this quantity the Reparation Commission shall take into account all the circumstances, including the quantities both of coal and of lignite which passed before the war between present Hungarian territory on the one hand and Silesia and the territory of the former Austrian Empire transferred to the Czecho-Slovak State and Poland in accordance with the treaties of peace on the other hand, as well as the quantities now available for export from those countries. Hungary shall in return furnish to the Czecho-Slovak State and Poland supplies of the lignite, foodstuffs and raw materials referred to in paragraph 1 in accordance with the decisions of the Reparation Commission.

3. The Czecho-Slovak State and Poland further undertake during the same period to take such steps as may be necessary to insure that coal, including lignite, shall be available for sale to purchasers in Hungary on terms as favorable as are applicable to like products sold under similar conditions to purchasers in the Czecho-Slovak State or Poland respectively or in any other country.

4. The provisions of paragraphs 2 and 3 prohibiting export duties or restrictions and determining the conditions of sale shall also apply to the supply of lignite by Hungary to Poland and the Czecho-Slovak State.

5. In case of disagreement in the execution or interpretation of any of the above provisions, the Reparation Commission shall decide.

6. In order to permit mutual assistance between Poland, Roumania, the Serb-Croat-Slovene State, Czecho-Slovakia, Hungary and Austria, in regard to products hitherto exchanged between the territories of these States, which are indispensable to their industry or trade, negotiations shall be undertaken, on the initiative of any of these States, within six months from the coming into force of the present treaty with a view to the conclusion with any other of the said States of separate conventions in conformity with the provisions of the present treaty, and in particular of Articles 200 to 205.

At the end of this period any State which has requested such a convention without succeeding in concluding it may apply to the Reparation Commission and request it to accelerate the conclusion of such convention.

ARTICLE 208.

1. Special agreements shall be made between Hungary and Austria as to the supply of foodstuffs, raw materials and manufactured articles reciprocally.

2. Pending the conclusion of such agreements, but in no case during more than five years from the coming into force of the present treaty, Hungary undertakes that no export duty or other restrictions of any kind shall be imposed on the export to Austria of foodstuffs of every description produced in Hungarian territory, up to a reasonable quantity to be fixed, failing agree-

ment between the States concerned, by the Reparation Commission. In fixing this quantity, the Reparation Commission shall take into account all the circumstances, and in particular the production and requirements of the two countries concerned. Austria shall in return furnish to Hungary supplies of the raw materials and manufactured articles referred to in paragraph 1 in accordance with the decisions of the Reparation Commission.

3. Hungary further undertakes during the same period to take such steps as may be necessary to ensure that any such products shall be available for sale to purchasers in Austria on terms as favorable as are applicable to like products sold under similar conditions to purchasers in Hungary or in any other country.

4. In case of disagreement in the execution or interpretation of any of the above provisions the Reparation Commission shall decide.

CHAPTER II.—SHIPPING.

ARTICLE 209.

The High Contracting Parties agree to recognize the flag flown by the vessels of any contracting party having no sea-coast, which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

CHAPTER III.—UNFAIR COMPETITION.

ARTICLE 210.

1. Hungary undertakes to adopt all the necessary legislative and administrative measures to protect goods the produce or manufacture of any one of the Allied and Associated Powers from all forms of unfair competition in commercial transactions.

Hungary undertakes to prohibit and repress by seizure and by other appropriate remedies the importation, exportation, manufacture, distribution, sale or offering for sale in her territory of all goods bearing upon themselves or their usual get-up or wrapping any marks, names, devices, or descriptions whatsoever which are calculated to convey directly or indirectly a false indication of the origin, type, nature or special characteristics of such goods.

2. Hungary undertakes, on condition that reciprocity is accorded in these matters, to respect any law, or any administrative or judicial decision given in conformity with such law, in force in any Allied or Associated State and duly communicated to her by the proper authorities, defining or regulating the right to any regional appellation in respect of wine or spirits produced in the State to which the region belongs or the conditions under which the use of any such appellation may be permitted; and the importation, exportation, manufacture, distribution, sale or offering for sale of products or articles bearing regional appellations inconsistent with such law or order shall be prohibited by Hungary and repressed by the measures prescribed in paragraph 1 of this article.

CHAPTER IV.—TREATMENT OF NATIONALS OF ALLIED AND ASSOCIATED POWERS.

ARTICLE 211.

Hungary undertakes:

(a) not to subject the nationals of the Allied and Associated Powers to any prohibition in regard to the exercise of occupations, professions, trade and industry, which shall not be equally applicable to all aliens without exception;

(b) not to subject the nationals of the Allied and Associated Powers in regard to the rights referred to in paragraph (a) to any regulation or restriction which might contravene directly or indirectly the stipulations of the said paragraph, or which shall be other or more disadvantageous than those which are applicable to nationals of the most favored nation;

(c) not to subject the nationals of the Allied and Associated Powers, their property, rights, or interests, including companies and associations in which they are interested, to any charge, tax or impost, direct or indirect, other or higher than those which are or may be imposed on her own nationals or their property, rights or interests;

(d) not to subject the nationals of any one of the Allied and Associated Powers to any restriction which was not applicable on July 1, 1914, to the nationals of such Powers unless such restriction is likewise imposed on her own nationals.

ARTICLE 212

The nationals of the Allied and Associated Powers shall enjoy in Hungarian territory a constant protection for their persons and for their property, rights and interests, and shall have free access to the courts of law.

ARTICLE 213.

Hungary undertakes to recognize any new nationality which has been or may be acquired by her nationals under the laws of the Allied and Associated Powers, and in accordance with the decisions of the competent authorities of these Powers pursuant to naturalization laws or under treaty stipulations, and to regard such persons as having, in consequence of the acquisition of such new nationality, in all respects severed their allegiance to their country of origin.

ARTICLE 214.

The Allied and Associated Powers may appoint consuls-general, consuls, vice-consuls and consular agents in Hungarian towns and ports. Hungary undertakes to approve the designation of the consuls-general, consuls, vice-consuls and consular agents, whose names shall be notified to her, and to admit them to the exercise of their functions in conformity with the usual rules and customs.

CHAPTER V.—GENERAL ARTICLES.

ARTICLE 215.

The obligations imposed on Hungary by Chapter I above shall cease to have effect five years from the date of the coming into force of the present treaty,

unless otherwise provided in the text, or unless the Council of the League of Nations shall, at least twelve months before the expiration of that period, decide that these obligations shall be maintained for a further period with or without amendment.

Nevertheless it is agreed that, unless the League of Nations decides otherwise, an Allied or Associated Power shall not after the expiration of three years from the coming into force of the present treaty be entitled to require the fulfilment by Hungary of the provisions of Articles 200, 201, 202 or 203 unless that Power accords correlative treatment to Hungary.

Article 211 shall remain in operation, with or without amendment, after the period of five years for such further period, if any, not exceeding five years, as may be determined by a majority of the Council of the League of Nations.

ARTICLE 216.

If the Hungarian Government engages in international trade, it shall not in respect thereof have or be deemed to have any rights, privileges or immunities of sovereignty.

SECTION II.—TREATIES.

ARTICLE 217.

From the coming into force of the present treaty and subject to the provisions thereof, the multilateral treaties, conventions and agreements of an economic or technical character concluded by the former Austro-Hungarian Monarchy and enumerated below and in the subsequent articles shall alone be applied as between Hungary and those of the Allied and Associated Powers party thereto:

(1) Conventions of March 14, 1884, December 1, 1886, and March 23, 1887, and Final Protocol of July 7, 1887, regarding the protection of submarine cables

(2) Convention of October 11, 1909, regarding the international circulation of motor-cars.

(3) Agreement of May 15, 1886, regarding the sealing of railway trucks subject to customs inspection, and Protocol of May 18, 1907.

(4) Agreement of May 15, 1886, regarding the technical standardization of railways.

(5) Convention of July 5, 1890, regarding the publication of customs tariffs and the organization of an international union for the publication of customs tariffs.

(6) Convention of April 25, 1907, regarding the raising of the Turkish customs tariff.

(7) Convention of March 14, 1857, for the redemption of toll dues on the Sounds and Belts.

(8) Convention of July 16, 1863, for the redemption of the Stade Toll on the Elbe.

(9) Convention of July 16, 1863, for the redemption of the toll dues on the Scheldt.

(10) Convention of October 29, 1888, regarding the establishment of a definite arrangement guaranteeing the free use of the Suez Canal.

(11) Conventions of September 23, 1910, respecting the unification of certain regulations regarding collisions and salvage at sea.

(12) Convention of December 21, 1904, regarding the exemption of hospital ships from dues and charges in ports.

(13) Convention of September 26, 1906, for the suppression of nightwork for women.

(14) Conventions of May 18, 1904, and May 4, 1910, regarding the suppression of the white slave traffic.

(15) Convention of May 4, 1910, regarding the suppression of obscene publications.

(16) Sanitary convention of December 3, 1903, and the preceding conventions signed on January 30, 1892, April 15, 1893, April 3, 1894, and March 13, 1897.

(17) Convention of May 20, 1875, regarding the unification and improvement of the metric system.

(18) Convention of November 29, 1906, regarding the unification of pharmacopœial formulæ for potent drugs.

(19) Convention of November 16 and 19, 1885, regarding the establishment of a concert pitch.

(20) Convention of June 7, 1905, regarding the creation of an International Agricultural Institute at Rome.

(21) Conventions of November 3, 1881, and April 15, 1889, regarding precautionary measures against phylloxera.

(22) Convention of March 19, 1902, regarding the protection of birds useful to agriculture.

(23) Convention of June 12, 1902, regarding the guardianship of minors.

ARTICLE 218.

From the coming into force of the present treaty the High Contracting Parties shall apply the conventions and agreements hereinafter mentioned, in so far as concerns them, Hungary undertaking to comply with the special stipulations contained in this article.

Postal Conventions:

Conventions and agreements of the Universal Postal Union concluded at Vienna, July 4, 1891.

Conventions and agreements of the Postal Union signed at Washington, June 15, 1897.

Conventions and agreements of the Postal Union signed at Rome, May 26, 1906.

Telegraphic Conventions:

International Telegraphic Conventions signed at St. Petersburg, July 10/22, 1875.

Regulations and Tariffs drawn up by the International Telegraphic Conference, Lisbon, June 11, 1908.

Hungary undertakes not to refuse her assent to the conclusion by the new States of the special arrangements referred to in the conventions and agreements relating to the Universal Postal Union and to the International Telegraphic Union, to which the said new States have adhered or may adhere.

ARTICLE 219.

From the coming into force of the present treaty the High Contracting Parties shall apply, in so far as concerns them, the International Radio-Telegraphic Conventions of July 5, 1912, Hungary undertaking to comply with the provisional regulations which will be indicated to her by the Allied and Associated Powers.

If within five years after the coming into force of the present treaty a new convention regulating international radio-telegraphic communications should have been concluded to take the place of the Convention of July 5, 1912, this new convention shall bind Hungary, even if Hungary should refuse either to take part in drawing up the convention, or subscribe thereto.

This new convention will likewise replace the provisional regulations in force.

ARTICLE 220.

The International Convention of Paris of March 20, 1883, for the protection of industrial property, revised at Washington on June 2, 1911, and the Agreement of April 14, 1891, concerning the international registration of trade marks shall be applied as from the coming into force of the present treaty, in so far as they are not affected or modified by the exceptions and restrictions resulting therefrom.

ARTICLE 221.

From the coming into force of the present treaty the High Contracting Parties shall apply, in so far as concerns them, the Convention of the Hague of July 17, 1905, relating to civil procedure. This provision, however, will not apply to France, Portugal and Roumania.

ARTICLE 222.

Hungary undertakes, within twelve months of the coming into force of the present treaty, to adhere in the prescribed form to the International Convention of Berne of September 9, 1886, for the protection of literary and artistic works, revised at Berlin on November 13, 1908, and completed by the Additional Protocol signed at Berne on March 20, 1914, relating to the protection of literary and artistic works.

Until her adherence, Hungary undertakes to recognize and protect by effective measures and in accordance with the principles of the said convention the literary and artistic works of nationals of the Allied and Associated Powers.

In addition, and irrespective of the above-mentioned adherence, Hungary undertakes to continue to assure such recognition and such protection to all literary and artistic works of the nationals of each of the Allied and Associated Powers to an extent at least as great as upon July 28, 1914, and upon the same conditions.

ARTICLE 223.

Hungary undertakes to adhere to the following conventions:

(1) Convention of September 26, 1906, for the suppression of the use of white phosphorus in the manufacture of matches.

(2) Convention of December 31, 1913, regarding the unification of commercial statistics.

ARTICLE 224.

Each of the Allied or Associated Powers, being guided by the general principles or special provisions of the present treaty, shall notify to Hungary the bilateral agreements of all kinds which were in force between her and the former Austro-Hungarian Monarchy, and which she wishes should be in force as between her and Hungary.

The notification referred to in the present article shall be made either directly or through the intermediary of another power. Receipt thereof shall be acknowledged in writing by Hungary. The date of the coming into force shall be that of the notification.

The Allied and Associated Powers undertake among themselves not to apply as between themselves and Hungary any agreements which are not in accordance with the terms of the present treaty.

The notification shall mention any provisions of the said agreements which, not being in accordance with the terms of the present treaty, shall not be considered as coming into force.

In case of any difference of opinion, the League of Nations will be called on to decide.

A period of six months from the coming into force of the present treaty is allowed to the Allied and Associated Powers within which to make the notification.

Only those bilateral agreements which have been the subject of such a notification shall be put in force between the Allied and Associated Powers and Hungary.

The above rules apply to all bilateral agreements existing between any Allied and Associated Powers signatories to the present treaty and Hungary, even if the said Allied and Associated Powers have not been in a state of war with Hungary.

ARTICLE 225.

Hungary hereby recognizes that all treaties, conventions or agreements concluded by her, or by the former Austro-Hungarian Monarchy, with Germany, Austria, Bulgaria or Turkey since August 1, 1914, until the coming into force of the present treaty, are of no effect.

ARTICLE 226.

Hungary undertakes to secure to the Allied and Associated Powers, and to the officials and nationals of the said Powers, the enjoyment of all the rights and advantages of any kind which she, or the former Austro-Hungarian Mon-

archy, may have granted to Germany, Austria, Bulgaria or Turkey, or to the officials and nationals of these States by treaties, conventions or arrangements concluded before August 1, 1914, so long as those treaties, conventions or arrangements are in force.

The Allied and Associated Powers reserve the right to accept or not the enjoyment of these rights and advantages.

ARTICLE 227.

Hungary recognizes that all treaties, conventions or arrangements which she, or the former Austro-Hungarian Monarchy, concluded with Russia, or with any State or Government of which the territory previously formed a part of Russia, or with Roumania, before July 28, 1914, or after that date until the coming into force of the present treaty, are of no effect.

ARTICLE 228.

Should an Allied or Associated Power, Russia, or a State or Government of which the territory formerly constituted a part of Russia, have been forced since July 28, 1914, by reason of military occupation or by any other means or for any other cause, to grant or to allow to be granted by the act of any public authority, concessions, privileges and favors of any kind to the former Austro-Hungarian Monarchy, or to Hungary or to an Hungarian national, such concessions, privileges and favors are *ipso facto* annulled by the present treaty.

No claims or indemnities which may result from this annulment shall be charged against the Allied or Associated Powers or the Powers, States, Governments or public authorities which are released from their engagements by the present article.

ARTICLE 229.

From the coming into force of the present treaty Hungary undertakes, so far as she is concerned, to give the Allied and Associated Powers and their nationals the benefit *ipso facto* of the rights and advantages of any kind which she or the former Austro-Hungarian Monarchy has granted by treaties, conventions or arrangements to non-belligerent States or their nationals since July 28, 1914, until the coming into force of the present treaty, so long as those treaties, conventions or arrangements are in force for Hungary.

ARTICLE 230.

Those of the High Contracting Parties who have not yet signed, or who have signed but not yet ratified, the Opium Convention signed at The Hague on January 23, 1912, agree to bring the said Convention into force, and for this purpose to enact the necessary legislation without delay and in any case within a period of twelve months from the coming into force of the present treaty.

Furthermore, they agree that ratification of the present treaty should in the case of Powers which have not yet ratified the Opium Convention be deemed in all respects equivalent to the ratification of that convention and to the signature of the special protocol which was opened at The Hague in accordance with the

resolutions adopted by the Third Opium Conference in 1914 for bringing the said convention into force.

For this purpose the Government of the French Republic will communicate to the Government of the Netherlands a certified copy of the protocol of the deposit of ratifications of the present treaty, and will invite the Government of the Netherlands to accept and deposit the said certified copy as if it were a deposit of ratifications of the Opium Convention and a signature of the Additional Protocol of 1914.

SECTION III.—DEBTS.

ARTICLE 231.

There shall be settled through the intervention of Clearing Offices to be established by each of the High Contracting Parties within three months of the notification referred to in paragraph (e) hereafter the following classes of pecuniary obligations:

(1) Debts payable before the war and due by a national of one of the contracting Powers, residing within its territory, to a national of an opposing Power, residing within its territory;

(2) Debts which became payable during the war to nationals of one contracting Power residing within its territory and arose out of transactions or contracts with the nationals of an opposing Power, resident within its territory, of which the total or partial execution was suspended on account of the existence of a state of war;

(3) Interest which has accrued, due before and during the war to a national of one of the contracting Powers in respect of securities issued or taken over by an opposing Power, provided that the payment of interest on such securities to the nationals of that Power or to neutrals has not been suspended during the war;

(4) Capital sums which have become payable before and during the war to nationals of one of the contracting Powers in respect of securities issued by one of the opposing Powers, provided that the payment of such capital sums to nationals of that Power or to neutrals has not been suspended during the war.

In the case of interest or capital sums payable in respect of securities issued or taken over by the former Austro-Hungarian Government the amount to be credited and paid by Hungary will be the interest or capital in respect only of the debt for which Hungary is liable in accordance with Part IX (Financial Clauses) of the present treaty, and the principles laid down by the Reparation Commission.

The proceeds of liquidation of enemy property, rights and interests mentioned in Section IV and in the annex thereto will be accounted for through the Clearing Offices, in the currency and at the rate of exchange hereinafter provided in paragraph (d), and disposed of by them under the conditions provided by the said section and annex.

The settlements provided for in this article shall be effected according to the following principles and in accordance with the annex to this section:

(a) Each of the High Contracting Parties shall prohibit, as from the coming

into force of the present treaty, both the payment and the acceptance of payment of such debts, and also all communications between the interested parties with regard to the settlement of the said debts otherwise than through the Clearing Offices;

(b) Each of the High Contracting Parties shall be respectively responsible for the payment of such debts due by its nationals, except in the cases where before the war the debtor was in a state of bankruptcy or failure, or had given formal indication of insolvency, or where the debt was due by a company whose business has been liquidated under emergency legislation during the war;

(c) The sums due to the nationals of one of the High Contracting Parties by the nationals of an opposing State will be debited to the Clearing Office of the country of the debtor, and paid to the creditor by the Clearing Office of the country of the creditor;

(d) Debts shall be paid or credited in the currency of such one of the Allied and Associated Powers, their colonies or protectorates, or the British Dominions or India, as may be concerned. If the debts are payable in some other currency they shall be paid or credited in the currency of the country concerned, whether an Allied or Associated Power, Colony, Protectorate, British Dominion or India, at the pre-war rate of exchange.

For the purpose of this provision the pre-war rate of exchange shall be defined as the average cable transfer rate prevailing in the Allied or Associated country concerned during the month immediately preceding the outbreak of war between the said country concerned and Austria-Hungary.

If a contract provides for a fixed rate of exchange governing the conversion of the currency in which the debt is stated into the currency of the Allied or Associated country concerned, then the above provisions concerning the rate of exchange shall not apply.

In the case of the new States of Poland and the Czecho-Slovak State, the currency in which and the rate of exchange at which debts shall be paid or credited shall be determined by the Reparation Commission provided for in Part VIII, unless they shall have been previously settled by agreement between the States interested;

(e) The provisions of this article and of the annex hereto shall not apply as between Hungary on the one hand and any one of the Allied and Associated Powers, their colonies or protectorates, or any one of the British Dominions or India on the other hand, unless within a period of one month from the deposit of the ratification of the present treaty by the Power in question, or of the ratification on behalf of such Dominion or of India, notice to that effect is given to Hungary by the Government of such Allied or Associated Power or of such Dominion or of India as the case may be;

(f) The Allied and Associated Powers which have adopted this article and the Annex hereto may agree between themselves to apply them to their respective nationals established in their territory so far as regards matters between their nationals and Hungarian nationals. In this case the payments made by application of this provision will be subject to arrangements between the Allied and Associated Clearing Offices concerned.

ANNEX.

1. Each of the High Contracting Parties will, within three months from the notification provided for in Article 231, paragraph (e), establish a Clearing Office for the collection and payment of enemy debts.

Local Clearing Offices may be established for any particular portion of the territories of the High Contracting Parties. Such local Clearing Offices may perform all the functions of a central Clearing Office in their respective districts, except that all transactions with the Clearing Office in the opposing State must be effected through the central Clearing Office.

2. In this Annex the pecuniary obligations referred to in the first paragraph of Article 231 are described as "enemy debts," the persons from whom the same are due as "enemy debtors," the persons to whom they are due as "enemy creditors," the Clearing Office in the country of the creditor is called the "Creditor Clearing Office," and the Clearing Office in the country of the debtor is called the "Debtor Clearing Office."

3. The High Contracting Parties will subject contraventions of paragraph (a) of Article 231 to the same penalties as are at present provided by their legislation for trading with the enemy. Those who have not prohibited trading with the enemy will enact provisions punishing the above-mentioned contraventions with severe penalties. The High Contracting Parties will similarly prohibit within their territory all legal process relating to payment of enemy debts, except in accordance with the provisions of this annex.

4. The government guarantee specified in paragraph (b) of Article 231 shall take effect whenever, for any reason, a debt shall not be recoverable, except in a case where at the date of the outbreak of war the debt was barred by the laws of prescription in force in the country of the debtor, or where the debtor was at that time in a state of bankruptcy or failure or had given formal indication of insolvency, or where the debt was due by a company whose business has been liquidated under emergency legislation during the war. In such case the procedure specified by this annex shall apply to payment of the dividends.

The terms "bankruptcy" and "failure" refer to the application of legislation providing for such juridical conditions. The expression "formal indication of insolvency" bears the same meaning as it has in English law.

5. Creditors shall give notice to the Creditor Clearing Office within six months of its establishment of debts due to them, and shall furnish the Clearing Office with any documents and information required of them.

The High Contracting Parties will take all suitable measures to trace and punish collusion between enemy creditors and debtors. The Clearing Offices will communicate to one another any evidence and information which might help the discovery and punishment of such collusion.

The High Contracting Parties will facilitate as much as possible postal and telegraphic communication at the expense of the parties concerned and through the intervention of the Clearing Offices between debtors and creditors desirous of coming to an agreement as to the amount of their debt.

The Creditor Clearing Office will notify the Debtor Clearing Office of all debts declared to it. The Debtor Clearing Office will, in due course, inform the Creditor Clearing Office which debts are admitted and which debts are contested. In the latter case, the Debtor Clearing Office will give the grounds for the non-admission of debt.

6. When a debt has been admitted, in whole or in part, the Debtor Clearing Office will at once credit the Creditor Clearing Office with the amount admitted, and at the same time notify it of such credit.

7. The debt shall be deemed to be admitted, in full and shall be credited forthwith to the Creditor Clearing Office unless within three months from the receipt of the notification or such longer time as may be agreed to by the Creditor Clearing Office notice has been given by the Debtor Clearing Office that it is not admitted.

8. When the whole or part of a debt is not admitted the two Clearing Offices will examine into the matter jointly and will endeavor to bring the parties to an agreement.

9. The Creditor Clearing Office will pay to the individual creditor the sums credited to it out of the funds placed at its disposal by the Government of its country and in accordance with the conditions fixed by the said Government, retaining any sum considered necessary to cover risks, expenses or commissions.

10. Any person having claimed payment of an enemy debt which is not admitted in whole or in part shall pay to the Clearing Office, by way of fine, interest at 5 per cent. on the part not admitted. Any person having unduly refused to admit the whole or part of a debt claimed from him shall pay, by way of fine, interest at 5 per cent. on the amount with regard to which his refusal shall be disallowed.

Such interest shall run from the date of expiration of the period provided for in paragraph 7 until the date on which the claim shall have been disallowed or the debt paid.

Each Clearing Office shall, in so far as it is concerned, take steps to collect the fines above provided for, and will be responsible if such fines cannot be collected.

The fines will be credited to the other Clearing Office, which shall retain them as a contribution towards the cost of carrying out the present provisions.

11. The balance between the Clearing Offices shall be struck every three months and the credit balance paid in cash by the debtor State within one month.

Nevertheless, any credit balances which may be due by one or more of the Allied and Associated Powers shall be retained until complete payment shall have been effected of the sums due to the Allied or Associated Powers or their nationals on account of the war.

12. To facilitate discussion between the Clearing Offices each of them shall have a representative at the place where the other is established.

13. Except for special reasons all discussions in regard to claims will, so far as possible, take place at the Debtor Clearing Office.

14. In conformity with Article 231, paragraph (b), the High Contracting

Parties are responsible for the payment of the enemy debts owing by their nationals.

The Debtor Clearing Office will therefore credit the Creditor Clearing Office with all debts admitted, even in case of inability to collect them from the individual debtor. The Governments concerned will, nevertheless, invest their respective Clearing Offices with all necessary powers for the recovery of debts which have been admitted.

15. Each Government will defray the expenses of the Clearing Office set up in its territory, including the salaries of the staff.

16. Where the two Clearing Offices are unable to agree whether a debt claimed is due, or in case of a difference between an enemy debtor and an enemy creditor or between the Clearing Offices, the dispute shall either be referred to arbitration if the parties so agree under conditions fixed by agreement between them, or referred to the Mixed Arbitral Tribunal provided for in Section VI hereafter.

At the request of the Creditor Clearing Office the dispute may, however, be submitted to the jurisdiction of the courts of the place of domicile of the debtor.

17. Recovery of sums found by the Mixed Arbitral Tribunal, the Court, or the arbitration tribunal to be due shall be effected through the Clearing Offices as if these sums were debts admitted by the Debtor Clearing Office.

18. Each of the Governments concerned shall appoint an agent who will be responsible for the presentation to the Mixed Arbitral Tribunal of the cases conducted on behalf of its Clearing Office. This agent will exercise a general control over the representatives or counsel employed by its nationals.

Decisions will be arrived at on documentary evidence, but it will be open to the Tribunal to hear the parties in person, or according to their preference by their representatives approved by the two Governments, or by the agent referred to above, who shall be competent to intervene along with the party or to re-open and maintain a claim abandoned by the same.

19. The Clearing Offices concerned will lay before the Mixed Arbitral Tribunal all the information and documents in their possession, so as to enable the Tribunal to decide rapidly on the cases which are brought before it.

20. Where one of the parties concerned appeals against the joint decision of the two Clearing Offices he shall make a deposit against the costs, which deposit shall only be refunded when the first judgment is modified in favor of the appellant and in proportion to the success he may attain, his opponent in case of such a refund being required to pay an equivalent proportion of the costs and expenses. Security accepted by the Tribunal may be substituted for a deposit.

A fee of 5 per cent. of the amount in dispute shall be charged in respect of all cases brought before the Tribunal. This fee shall, unless the Tribunal direct otherwise, be borne by the unsuccessful party. Such fee shall be added to the deposit referred to. It is also independent of the security.

The Tribunal may award to one of the parties a sum in respect of the expenses of the proceedings.

Any sum payable under this paragraph shall be credited to the Clearing Office of the successful party as a separate item.

21. With a view to the rapid settlement of claims, due regard shall be paid in the appointment of all persons connected with the Clearing Offices or with the Mixed Arbitral Tribunal to their knowledge of the language of the other country concerned.

Each of the Clearing Offices will be at liberty to correspond with the other and to forward documents in its own language.

22. Subject to any special agreement to the contrary between the Governments concerned, debts shall carry interest in accordance with the following provisions:

Interest shall not be payable on sums of money due by way of dividend, interest, or other periodical payments which themselves represent interest on capital.

The rate of interest shall be 5 per cent. per annum, except in cases where, by contract, law or custom, the creditor is entitled to payment of interest at a different rate. In such cases the rate to which he is entitled shall prevail.

Interest shall run from the date of commencement of hostilities (or, if the sum of money to be recovered fell due during the war, from the date at which it fell due) until the sum is credited to the Clearing Office of the creditor.

Sums due by way of interest shall be treated as debts admitted by the Clearing Offices and shall be credited to the Creditor Clearing Office in the same way as such debts.

23. Where by decision of the Clearing Offices or the Mixed Arbitral Tribunal a claim is held not to fall within Article 231, the creditor shall be at liberty to prosecute the claim before the courts or to take such other proceedings as may be open to him.

The presentation of a claim to the Clearing Office suspends the operation of any period of prescription.

24. The High Contracting Parties agree to regard the decisions of the Mixed Arbitral Tribunal as final and conclusive, and to render them binding upon their nationals.

25. In any case where a Creditor Clearing Office declines to notify a claim to the Debtor Clearing Office, or to take any step provided for in this annex intended to make effective in whole or in part a request of which it has received due notice, the enemy creditor shall be entitled to receive from the Clearing Office a certificate setting out the amount of the claim, and shall then be entitled to prosecute the claim before the courts or to take such other proceedings as may be open to him.

SECTION IV.—PROPERTY, RIGHTS AND INTERESTS.

ARTICLE 232.

I. The question of private property, rights and interests in an enemy country shall be settled according to the principles laid down in this section and to the provisions of the annex hereto.

(a) The exceptional war measures and measures of transfer (defined in paragraph 3 of the annex hereto) taken in the territory of the former Kingdom of Hungary with respect to the property, rights and interests of nationals of Allied or Associated Powers, including companies and associations in which they are interested, when liquidation has not been completed, shall be immediately discontinued or stayed and the property, rights and interests concerned restored to their owners.

(b) Subject to any contrary stipulations which may be provided for in the present treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests which belong at the date of the coming into force of the present treaty to nationals of the former Kingdom of Hungary, or companies controlled by them, and are within the territories, colonies, possessions and protectorates of such Powers (including territories ceded to them by the present Treaty) or which are under the control of those Powers.

The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned, and the owner shall not be able to dispose of such property, rights or interests nor to subject them to any charge without the consent of that State.

Persons who within six months of the coming into force of the present treaty show that they have acquired *ipso facto* in accordance with its provisions the nationality of an Allied or Associated Power, including those who under Article 62 obtain such nationality with the consent of the competent authorities or in virtue of previous rights of citizenship (*pertinenza*), will not be considered as nationals of the former Kingdom of Hungary within the meaning of this paragraph.

(c) The price or the amount of compensation in respect of the exercise of the right referred to in paragraph (b) will be fixed in accordance with the methods of sale or valuation adopted by the laws of the country in which the property has been retained or liquidated.

(d) As between the Allied and Associated Powers and their nationals on the one hand and nationals of the former Kingdom of Hungary on the other hand, as also between Hungary on the one hand and the Allied and Associated Powers and their nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done or to be done in execution of such measures as defined in paragraphs 1 and 3 of the annex hereto shall be considered as final and binding upon all persons except as regards the reservations laid down in the present treaty.

(e) The nationals of Allied and Associated Powers shall be entitled to compensation in respect of damage or injury inflicted upon their property, rights or interests, including any company or association in which they are interested, in the territory of the former Kingdom of Hungary, by the application either of the exceptional war measures or measures of transfer mentioned in paragraphs 1 and 3 of the annex hereto. The claims made in this respect by such nationals shall be investigated, and the total of the compensation shall be determined by the Mixed Arbitral Tribunal provided for in Section VI or by an arbitrator appointed by that Tribunal. This compensation shall be borne by

Hungary, and may be charged upon the property of nationals of the former Kingdom of Hungary, or companies controlled by them, as defined in paragraph (b), within the territory or under the control of the claimant's State. This property may be constituted as a pledge for enemy liabilities under the conditions fixed by paragraph 4 of the annex hereto. The payment of this compensation may be made by the Allied or Associated State, and the amount will be debited to Hungary.

(f) Whenever a national of an Allied or Associated Power is entitled to property which has been subjected to a measure of transfer in the territory of the former Kingdom of Hungary and expresses a desire for its restitution, his claim for compensation in accordance with paragraph (e) shall be satisfied by the restitution of the said property if it still exists in specie.

In such case Hungary shall take all necessary steps to restore the evicted owner to the possession of his property, free from all encumbrances or burdens with which it may have been charged after the liquidation, and to indemnify all third parties injured by the restitution.

If the restitution provided for in this paragraph cannot be effected, private agreements arranged by the intermediation of the Powers concerned or the Clearing Offices provided for in the annex to Section III may be made, in order that the national of the Allied or Associated Power may secure compensation for the injury referred to in paragraph (e) by the grant of advantages or equivalents which he agrees to accept in place of the property, rights or interests of which he was deprived.

Through restitution in accordance with this article, the price or the amount of compensation fixed by the application of paragraph (e) will be reduced by the actual value of the property restored, account being taken of compensation in respect of loss of use or deterioration.

(g) The rights conferred by paragraph (f) are reserved to owners who are nationals of Allied or Associated Powers within whose territory legislative measures prescribing the general liquidation of enemy property, rights or interests were not applied before the signature of the armistice.

(h) Except in cases where, by application of paragraph (f), restitutions in specie have been made, the net proceeds of sales of enemy property, rights or interests wherever situated carried out either by virtue of war legislation, or by application of this article, and in general all cash assets of enemies, other than proceeds of sales of property or cash assets in Allied or Associated countries belonging to persons covered by the last sentence of paragraph (b) above, shall be dealt with as follows:—

(1) As regards Powers adopting Section III and the annex thereto, the said proceeds and cash assets shall be credited to the Power of which the owner is a national, through the Clearing Office established thereunder; any credit balance in favor of Hungary resulting therefrom shall be dealt with as provided in Article 173, Part VIII (Reparation), of the present treaty.

(2) As regards Powers not adopting Section III and the annex thereto, the proceeds of the property, rights and interests, and the cash assets, of the nationals of Allied or Associated Powers held by Hungary shall be paid imme-

diately to the person entitled thereto or to his Government; the proceeds of the property, rights and interests, and the cash assets, of nationals of the former Kingdom of Hungary, or companies controlled by them, as defined in paragraph (b), received by an Allied or Associated Power shall be subject to disposal by such Power in accordance with its laws and regulations and may be applied in payment of the claims and debts defined by this article or paragraph 4 of the annex hereto. Any such property, rights and interests or proceeds thereof or cash assets not used as above provided may be retained by the said Allied or Associated Power, and if retained, the cash value thereof shall be dealt with as provided in Article 173, Part VIII (Reparation), of the present treaty.

(i) Subject to the provisions of Article 250, in the case of liquidations effected in new States, which are signatories of the present treaty as Allied and Associated Powers, or in States which are not entitled to share in the reparation payments to be made by Hungary, the proceeds of liquidations effected by such States shall, subject to the rights of the Reparation Commission under the present treaty, particularly under Articles 165, Part VIII (Reparation), and 194, Part IX (Financial Clauses), be paid direct to the owner. If, on the application of that owner, the Mixed Arbitral Tribunal provided for by Section VI of this part, or an arbitrator appointed by that Tribunal, is satisfied that the conditions of the sale or measures taken by the Government of the State in question outside its general legislation were unfairly prejudicial to the price obtained, they shall have discretion to award to the owner equitable compensation to be paid by that State.

(j) Hungary undertakes to compensate her nationals in respect of the sale or retention of their property, rights or interests in Allied or Associated States.

(k) The amount of all taxes or imposts on capital levied or to be levied by Hungary on the property, rights and interests of the nationals of the Allied or Associated Powers from November 3, 1918, until three months from the coming into force of the present treaty, or, in the case of property, rights or interests which have been subjected to exceptional measures of war, until restitution in accordance with the present treaty, shall be restored to the owners.

II. Subject to the preceding provisions, all measures other than those above referred to taken by the *de jure* or *de facto* authorities in the territory of the former Kingdom of Hungary between November 3, 1918, and the coming into force of the present treaty, and causing injury to the property, rights and interests of the Allied and Associated Powers or their nationals, including companies and associations in which they were interested, are declared null and void.

The provisions of paragraphs (a), (e), (f), (h) and (k) above apply to property, rights and interests which belong to nationals of the Allied and Associated Powers, including companies and associations in which they were interested, and which have been the subject of injurious measures such as expropriation, confiscation, seizure, requisition, destruction or deterioration effected as the result either of laws or regulations or of acts of violence on the part of the *de jure* or *de facto* authorities which have existed in Hungary, or of the Hungarian population.

III. Companies and associations include in particular the Orthodox Greek

communities established in Buda-Pesth and other Hungarian towns, as well as pious and other foundations, when nationals of the Allied and Associated Powers are interested in such communities or foundations.

IV. No forfeiture on account of failure to complete any formality or make any declaration imposed by Hungarian laws or decrees promulgated since the armistice and before the coming into force of the present treaty shall be valid as against nationals of the Allied and Associated Powers, including companies and associations in which they were interested.

ARTICLE 233.

Hungary undertakes, with regard to the property, rights and interests, including companies and associations in which they were interested, resorted to nationals of Allied and Associated Powers in accordance with the provisions of Article 232:

(a) to restore and maintain, except as expressly provided in the present treaty, the property, rights and interests of the nationals of Allied or Associated Powers in the legal position obtaining in respect of the property, rights and interests of nationals of the former Kingdom of Hungary under the laws in force before the war;

(b) not to subject the property, rights or interests of the nationals of the Allied or Associated Powers to any measures in derogation of property rights which are not applied equally to the property, rights and interests of Hungarian nationals, and to pay adequate compensation in the event of the application of these measures.

ANNEX.

1. In accordance with the provisions of Article 232, paragraph (d), the validity of vesting orders and of orders for the winding up of businesses or companies, and of any other orders, directions, decisions or instructions of any court or any department of the Government of any of the High Contracting Parties made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests is confirmed. The interests of all persons shall be regarded as having been effectively dealt with by any order, direction, decision or instruction dealing with property in which they may be interested, whether or not such interests are specifically mentioned in the order, direction, decision or instruction. No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction. Every action taken with regard to any property, business or company, whether as regards its investigation, sequestration, compulsory administration, use, requisition, supervision or winding up, the sale or management of property, rights or interests, the collection or discharge of debts, the payment of costs, charges or expenses, or any other matter whatsoever, in pursuance of orders, directions, decisions or instructions of any court or of any department of the Government of any of the High Contracting Parties, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property,

rights or interests, is confirmed. Provided that the provisions of this paragraph shall not be held to prejudice the titles to property heretofore acquired in good faith and for value and in accordance with the laws of the country in which the property is situated by nationals of the Allied and Associated Powers.

The provisions of this paragraph do not apply to such of the above-mentioned measures as have been taken by the former Austro-Hungarian Government in invaded or occupied territory, nor to such of the above-mentioned measures as have been taken by Hungary or the Hungarian authorities since November 3, 1918, all of which measures shall be void.

2. No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or department of the Government of such a Power by Hungary or by any Hungarian national or by or on behalf of any national of the former Kingdom of Hungary wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

3. In Article 232 and this annex the expression "exceptional war measures" includes measures of all kinds, legislative, administrative, judicial or others, that have been taken or will be taken hereafter with regard to enemy property, and which have had or will have the effect of removing from the proprietors the power of disposition over their property, though without affecting the ownership, such as measures of supervision, of compulsory administration, and of sequestration; or measures which have had or will have as an object the seizure of, the use of, or the interference with enemy assets, for whatsoever motive, under whatsoever form or in whatsoever place. Acts in the execution of these measures include all detentions, instructions, orders or decrees of government departments or courts applying these measures to enemy property, as well as acts performed by any person connected with the administration or the supervision of enemy property, such as the payment of debts, the collecting of credits, the payment of any costs, charges or expenses, or the collecting of fees.

Measures of transfer are those which have affected or will affect the ownership of enemy property by transferring it in whole or in part to a person other than the enemy owner, and without his consent, such as measures directing the sale, liquidation or devolution of ownership in enemy property, or the cancelling of titles or securities.

4. All property, rights and interests of nationals of the former Kingdom of Hungary within the territory of any Allied or Associated Power and the net proceeds of their sale, liquidation or other dealing therewith may be charged by that Allied or Associated Power in the first place with payment of amounts due in respect of claims by the nationals of that Allied or Associated Power with regard to their property, rights and interests, including companies and associations in which they are interested, in territory of the former Kingdom

of Hungary or debts owing to them by Hungarian nationals, and with payment of claims growing out of acts committed by the former Austro-Hungarian Government or by any Hungarian authorities since July 28, 1914, and before that Allied or Associated Power entered into the war. The amount of such claims may be assessed by an arbitrator appointed by M. Gustave Ador, if he is willing, or if no such appointment is made by him, by an arbitrator appointed by the Mixed Arbitral Tribunal provided for in Section VI. They may be charged in the second place with payment of the amounts due in respect of claims by the nationals of such Allied or Associated Power with regard to their property, rights and interests in the territory of other enemy Powers, in so far as those claims are otherwise unsatisfied.

5. Notwithstanding the provisions of Article 232, where immediately before the outbreak of war a company incorporated in an Allied or Associated State had rights in common with a company controlled by it and incorporated in Hungary to the use of trade-marks in third countries, or enjoyed the use in common with such company of unique means of reproduction of goods or articles for sale in third countries, the former company shall alone have the right to use these trade-marks in third countries to the exclusion of the Hungarian company, and these unique means of reproduction shall be handed over to the former company, notwithstanding any action taken under war legislation in force in the Austro-Hungarian Monarchy with regard to the latter company or its business, industrial property or shares. Nevertheless, the former company, if requested, shall deliver to the latter company derivative copies permitting the continuation of reproduction of articles for use in Hungary.

6. Up to the time when restitution is carried out in accordance with Article 232, Hungary is responsible for the conservation of property, rights and interests of the nationals of Allied or Associated Powers, including companies and associations in which they are interested, that have been subjected by her to exceptional war measures.

7. Within one year from the coming into force of the present treaty the Allied or Associated Powers will specify the property, rights and interests over which they intend to exercise the right provided in Article 232, paragraph (f).

8. The restitution provided in Article 232 will be carried out by order of the Hungarian Government or of the authorities which have been substituted for it. Detailed accounts of the action of administrators shall be furnished to the interested persons by the Hungarian authorities upon request, which may be made at any time after the coming into force of the present treaty.

9. Until completion of the liquidation provided for by Article 232, paragraph (b), the property, rights and interests of the persons referred to in that paragraph will continue to be subject to exceptional war measures that have been or will be taken with regard to them.

10. Hungary will, within six months from the coming into force of the present treaty, deliver to each Allied or Associated Power all securities, certificates, deeds or other documents of title held by its nationals and relating to property, rights or interests situated in the territory of that Allied or Associated Power, including any shares, stock, debentures, debenture stock or other

obligations of any company incorporated in accordance with the laws of that Power.

Hungary will at any time on demand of any Allied or Associated Power furnish such information as may be required with regard to the property, rights and interests of Hungarian nationals within the territory of such Allied or Associated Power, or with regard to any transactions concerning such property, rights or interests effected since July 1, 1914.

11. The expression "cash assets" includes all deposits or funds established before or after the existence of a state of war, as well as all assets coming from deposits, revenues, or profits collected by administrators, sequestrators, or others from funds placed on deposit or otherwise, but does not include sums belonging to the Allied or Associated Powers or to their component states, provinces or municipalities.

12. All investments wheresoever effected with the cash assets of nationals of the High Contracting Parties, including companies and associations in which such nationals were interested, by persons responsible for the administration of enemy properties or having control over such administration, or by order of such persons or of any authority whatsoever, shall be annulled. These cash assets shall be accounted for irrespective of any such investment.

13. Within one month from the coming into force of the present treaty, or on demand at any time, Hungary will deliver to the Allied and Associated Powers all accounts, vouchers, records, documents and information of any kind which may be within Hungarian territory, and which concern the property, rights and interests of the nationals of those Powers, including companies and associations in which they are interested, that have been subjected to an exceptional war measure, or to a measure of transfer either in the territory of the former Kingdom of Hungary or in territory occupied by that Kingdom or its allies.

The controllers, supervisors, managers, administrators, sequestrators, liquidators and receivers shall be personally responsible under guarantee of the Hungarian Government for the immediate delivery in full of these accounts and documents, and for their accuracy.

14. The provisions of Article 232 and this annex relating to property, rights and interests in an enemy country, and the proceeds of the liquidation thereof, apply to debts, credits and accounts, Section III regulating only the method of payment.

In the settlement of matters provided for in Article 232 between Hungary and the Allied or Associated Powers, their colonies or protectorates, or any one of the British Dominions or India, in respect of any of which a declaration shall not have been made that they adopt Section III, and between their respective nationals, the provisions of Section III respecting the currency in which payment is to be made and the rate of exchange and of interest shall apply unless the Government of the Allied or Associated Power concerned shall within six months of the coming into force of the present treaty notify Hungary that one or more of the said provisions are not to be applied.

15. The provisions of Article 232 and this annex apply to industrial, literary

and artistic property which has been or will be dealt with in the liquidation of property, rights, interests, companies or businesses under war legislation by the Allied or Associated Powers, or in accordance with the stipulations of Article 232, paragraph (b).

SECTION V.—CONTRACTS, PRESCRIPTIONS, JUDGMENTS.

ARTICLE 234.

(a) Any contract concluded between enemies shall be regarded as having been dissolved as from the time when any two of the parties became enemies, except in respect of any debt or other pecuniary obligation arising out of any act done or money paid thereunder, and subject to the exceptions and special rules with regard to particular contracts or classes of contracts contained herein or in the annex hereto.

(b) Any contract of which the execution shall be required in the general interest, within six months from the date of the coming into force of the present treaty, by the Government of the Allied or Associated Power of which one of the parties is a national, shall be excepted from dissolution under this article.

When the execution of the contract thus kept alive would, owing to the alteration of trade conditions, cause one of the parties substantial prejudice the Mixed Arbitral Tribunal provided for by Section VI shall be empowered to grant to the prejudiced party equitable compensation.

(c) Having regard to the provisions of the constitution and law of the United States of America and of Japan, neither the present article, nor Article 235, nor the annex hereto shall apply to contracts made between nationals of these States and nationals of the former Kingdom of Hungary; nor shall Article 240 apply to the United States of America or its nationals.

(d) The present Article and the annex hereto shall not apply to contracts the parties to which became enemies by reason of one of them being an inhabitant of territory of which the sovereignty has been transferred, if such party shall acquire under the present treaty the nationality of an Allied or Associated Power, nor shall they apply to contracts between nationals of the Allied and Associated Powers between whom trading has been prohibited by reason of one of the parties being in Allied or Associated territory in the occupation of the enemy.

(e) Nothing in the present article or the annex hereto shall be deemed to invalidate a transaction lawfully carried out in accordance with a contract between enemies if it has been carried out with the authority of one of the belligerent Powers.

ARTICLE 235.

(a) All periods of prescription, or limitation of right of action, whether they began to run before or after the outbreak of war, shall be treated in the territory of the High Contracting Parties, so far as regards relations between enemies, as having been suspended for the duration of the war. They shall begin to run again at earliest three months after the coming into force of the present treaty.

This provision shall apply to the period prescribed for the presentation of interest or dividend coupons or for the presentation for repayment of securities drawn for repayment or repayable on any other ground.

(b) Where, on account of failure to perform any act or comply with any formality during the war, measures of execution have been taken in the territory of the former Kingdom of Hungary to the prejudice of a national of an Allied or Associated Power, the claim of such national shall, if the matter does not fall within the competence of the Courts of an Allied or Associated Power, be heard by the Mixed Arbitral Tribunal provided for by Section VI.

(c) Upon the application of any interested person who is a national of an Allied or Associated Power the Mixed Arbitral Tribunal shall order the restoration of the rights which have been prejudiced by the measures of execution referred to in paragraph (b), wherever, having regard to the particular circumstances of the case, such restoration is equitable and possible.

If such restoration is inequitable or impossible the Mixed Arbitral Tribunal may grant compensation to the prejudiced party to be paid by the Hungarian Government.

(d) Where a contract between enemies has been dissolved by reason either of failure on the part of either party to carry out its provisions or of the exercise of a right stipulated in the contract itself the party prejudiced may apply to the Mixed Arbitral Tribunal for relief. The Tribunal will have the powers provided for in paragraph (c).

(e) The provisions of the preceding paragraphs of this article shall apply to the nationals of Allied and Associated Powers who have been prejudiced by reason of measures referred to above taken by the authorities of the former Hungarian Government in invaded or occupied territory, if they have not been otherwise compensated.

(f) Hungary shall compensate any third party who may be prejudiced by any restitution or restoration ordered by the Mixed Arbitral Tribunal under the provisions of the preceding paragraphs of this article.

(g) As regards negotiable instruments, the period of three months provided under paragraph (a) shall commence as from the date on which any exceptional regulations applied in the territories of the interested Power with regard to negotiable instruments shall have definitely ceased to have force.

ARTICLE 236.

As between enemies no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment or to give notice of non-acceptance or non-payment to drawers or indorsers or to protest the instrument, nor by reason of failure to complete any formality during the war.

Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or indorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have

given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the present treaty shall be allowed within which presentation, notice of non-acceptance or non-payment or protest may be made.

ARTICLE 237.

Judgments given by the courts of an Allied or Associated Power in all cases which, under the present treaty, they are competent to decide, shall be recognized in Hungary as final, and shall be enforced without it being necessary to have them declared executory.

If a judgment or measure of execution in respect of any dispute which may have arisen has been given during the war by a judicial authority of the former Kingdom of Hungary against a national of an Allied or Associated Power, or a company or association in which one of such nationals was interested, in a case in which either such national or such company or association was not able to make their defence, the Allied and Associated national who has suffered prejudice thereby shall be entitled to recover compensation to be fixed by the Mixed Arbitral Tribunal provided for in Section VI.

At the instance of the national of the Allied or Associated Power the compensation above-mentioned may, upon order to that effect of the Mixed Arbitral Tribunal, be effected where it is possible by replacing the parties in the situation which they occupied before the judgment was given by the Hungarian court.

The above compensation may likewise be obtained before the Mixed Arbitral Tribunal by the nationals of Allied or Associated Powers who have suffered prejudice by judicial measures taken in invaded or occupied territories, if they have not been otherwise compensated.

ARTICLE 238.

For the purpose of Sections III, IV, V and VII, the expression "during the war" means for each Allied or Associated Power the period between the commencement of the state of war between that Power and the former Austro-Hungarian Monarchy and the coming into force of the present treaty.

ANNEX.

I. GENERAL PROVISIONS.

1. Within the meaning of Articles 234, 235 and 236, the parties to a contract shall be regarded as enemies when trading between them shall have been prohibited by or otherwise became unlawful under laws, orders or regulations to which one of those parties was subject. They shall be deemed to have become enemies from the date when such trading was prohibited or otherwise became unlawful.

2. The following classes of contracts are excepted from dissolution by Article 234 and, without prejudice to the rights contained in Article 232 (b), remain in force subject to the application of domestic laws, orders or regulations

made during the war by the Allied and Associated Powers and subject to the terms of the contracts:

(a) Contracts having for their object the transfer of estates or of real or personal property where the property therein had passed or the object had been delivered before the parties became enemies;

(b) Leases and agreements for leases of land and houses;

(c) Contracts of mortgage, pledge or lien;

(d) Concessions concerning mines, quarries or deposits;

(e) Contracts between individuals or companies and States, provinces, municipalities or other similar juridical persons charged with administrative functions, and concessions granted by States, provinces, municipalities or other similar juridical persons charged with administrative functions.

3. If the provisions of a contract are in part dissolved under Article 234, the remaining provisions of that contract shall, subject to the same application of domestic laws as is provided for in paragraph 2, continue in force if they are severable, but where they are not severable the contract shall be deemed to have been dissolved in its entirety.

II. PROVISIONS RELATING TO CERTAIN CLASSES OF CONTRACTS.

Stock Exchange and Commercial Exchange Contracts.

4. (a) Rules made during the war by any recognized Exchange or Commercial Association providing for the closure of contracts entered into before the war by an enemy are confirmed by the High Contracting Parties, as also any action taken thereunder, provided:

(1) that the contract was expressed to be made subject to the rules of the Exchange or Association in question;

(2) that the rules applied to all persons concerned;

(3) that the conditions attaching to the closure were fair and reasonable.

(b) The preceding paragraph shall not apply to rules made during the occupation by Exchanges or Commercial Associations in the districts occupied by the enemy.

(c) The closure of contracts relating to cotton "futures," which were closed as on July 31, 1914, under the decision of the Liverpool Cotton Association, is also confirmed.

Security.

5. The sale of a security held for an unpaid debt owing by an enemy shall be deemed to have been valid irrespective of notice to the owner if the creditor acted in good faith and with reasonable care and prudence, and no claim by the debtor on the ground of such sale shall be admitted.

This stipulation shall not apply to any sale of securities effected by an enemy during the occupation in regions invaded or occupied by the enemy.

Negotiable Instruments.

6. As regards Powers which adopt Section III and the annex thereto the pecuniary obligations existing between enemies and resulting from the issue

of negotiable instruments shall be adjusted in conformity with the said annex by the instrumentality of the Clearing Offices, which shall assume the rights of the holder as regards the various remedies open to him.

7. If a person has either before or during the war become liable upon a negotiable instrument in accordance with an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of his liability notwithstanding the outbreak of war.

III. CONTRACTS OF INSURANCE.

8. Contracts of insurance entered into by any person with another person who subsequently became an enemy will be dealt with in accordance with the following paragraphs.

Fire Insurance.

9. Contracts for the insurance of property against fire entered into by a person interested in such property with another person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy, or on account of the failure during the war and for a period of three months thereafter to perform his obligations under the contract, but they shall be dissolved at the date when the annual premium becomes payable for the first time after the expiration of a period of three months after the coming into force of the present treaty.

A settlement shall be effected of unpaid premiums which became due during the war or of claims for losses which occurred during the war.

10. Where by administrative or legislative action an insurance against fire effected before the war has been transferred during the war from the original to another insurer, the transfer will be recognized and the liability of the original insurer will be deemed to have ceased as from the date of the transfer. The original insurer will, however, be entitled to receive on demand full information as to the terms of the transfer, and if it should appear that these terms were not equitable they shall be amended so far as may be necessary to render them equitable.

Furthermore, the insured shall, subject to the concurrence of the original insurer, be entitled to retransfer the contract to the original insurer as from the date of the demand.

Life Insurance.

11. Contracts of life insurance entered into between an insurer and a person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy.

Any sum which during the war became due upon a contract deemed not to have been dissolved under the preceding provision shall be recoverable after the war with the addition of interest at five per cent. per annum from the date of its becoming due up to the day of payment.

Where the contract has lapsed during the war owing to non-payment of premiums, or has become void from breach of the conditions of the contract, the assured or his representatives or the persons entitled shall have the right at

any time within twelve months of the coming into force of the present treaty to claim from the insurer the surrender value of the policy at the date of its lapse or avoidance.

Where the contract has lapsed during the war owing to non-payment of premiums the payment of which has been prevented by the enforcement of measures of war, the assured or his representative or the persons entitled shall have the right to restore the contract on payment of the premiums with interest at five per cent. per annum within three months from the coming into force of the present treaty.

12. Where contracts of life insurance have been entered into by a local branch of an insurance company established in a country which subsequently became an enemy country, the contract shall, in the absence of any stipulation to the contrary in the contract itself, be governed by the local law, but the insurer shall be entitled to demand from the insured or his representatives the refund of sums paid on claims made or enforced under measures taken during the war, if the making or enforcement of such claims was not in accordance with the terms of the contract itself or was not consistent with the laws or treaties existing at the time when it was entered into.

13. In any case where by the law applicable to the contract the insurer remains bound by the contract notwithstanding the non-payment of premiums until notice is given to the insured of the termination of the contract, he shall be entitled, where the giving of such notice was prevented by the war, to recover the unpaid premiums with interest at five per cent. per annum from the insured.

14. Insurance contracts shall be considered as contracts of life assurance for the purpose of paragraphs 11 to 13 when they depend on the probabilities of human life combined with the rate of interest for the calculation of the reciprocal engagements between the two parties.

Marine Insurance.

15. Contracts of marine insurance including time policies and voyage policies entered into between an insurer and a person who subsequently became an enemy shall be deemed to have been dissolved on his becoming an enemy, except in cases where the risk undertaken in the contract had attached before he became an enemy.

Where the risk had not attached, money paid by way of premium or otherwise shall be recoverable from the insurer.

Where the risk had attached, effect shall be given to the contract notwithstanding the party becoming an enemy, and sums due under the contract, either by way of premiums or in respect of losses, shall be recoverable after the coming into force of the present treaty.

In the event of any agreement being come to for the payment of interest on sums due before the war to or by the nationals of States which have been at war and recovered after the war, such interest shall in the case of losses recoverable under contracts of marine insurance run from the expiration of a period of one year from the date of the loss.

16. No contract of marine insurance with an insured person who subsequently

became an enemy shall be deemed to cover losses due to belligerent action by the Power of which the insurer was a national or by the allies or associates of such Power.

17. Where it is shown that a person who had before the war entered into a contract of marine insurance with an insurer who subsequently became an enemy entered after the outbreak of war into a new contract covering the same risk with an insurer who was not an enemy, the new contract shall be deemed to be substituted for the original contract as from the date when it was entered into, and the premiums payable shall be adjusted on the basis of the original insurer having remained liable on the contract only up till the time when the new contract was entered into.

Other Insurances.

18. Contracts of insurance entered into before the war between an insurer and a person who subsequently became an enemy, other than contracts dealt with in paragraphs 9 to 17, shall be treated in all respects on the same footing as contracts of fire insurance between the same persons would be dealt with under the said paragraphs.

Re-insurance.

19. All treaties of re-insurance with a person who became an enemy shall be regarded as having been abrogated by the person becoming an enemy, but without prejudice in the case of life or marine risks which had attached before the war to the right to recover payment after the war for sums due in respect of such risks.

Nevertheless if, owing to invasion, it has been impossible for the re-insured to find another re-insurer, the treaty shall remain in force until three months after the coming into force of the present treaty.

Where the re-insurance treaty becomes void under this paragraph, there shall be an adjustment of accounts between the parties in respect both of premiums paid and payable and of liabilities for losses in respect of life or marine risks which had attached before the war. In the case of risks other than those mentioned in paragraphs 11 to 17 the adjustment of accounts shall be made as at the date of the parties becoming enemies without regard to claims for losses which may have occurred since that date.

20. The provisions of the preceding paragraph will extend equally to re-insurances existing at the date of the parties becoming enemies of particular risks undertaken by the insurer in a contract of insurance against any risks other than life or marine risks.

21. Re-insurance of life risks effected by particular contracts and not under any general treaty remain in force.

22. In case of a re-insurance effected before the war of a contract of marine insurance, the cession of a risk which had been ceded to the re-insurer shall, if it had attached before the outbreak of war, remain valid and effect be given to the contract notwithstanding the outbreak of war; sums due under the contract of re-insurance in respect either of premiums or of losses shall be recoverable after the war.

23. The provisions of paragraphs 16 and 17 and the last part of paragraph 5 shall apply to contracts for the re-insurance of marine risks.

SECTION VI.—MIXED ARBITRAL TRIBUNAL.

ARTICLE 239.

(a) Within three months from the coming into force of the present treaty, a Mixed Arbitral Tribunal shall be established between each of the Allied and Associated Powers on the one hand and Hungary on the other hand. Each such Tribunal shall consist of three members. Each of the Governments concerned shall appoint one of these members. The president shall be chosen by agreement between the two Governments concerned.

In case of failure to reach agreement, the president of the Tribunal and two other persons, either of whom may in case of need take his place, shall be chosen by the Council of the League of Nations, or, until this is set up, by M. Gustave Ador if he is willing. These persons shall be nationals of Powers that have remained neutral during the war.

If in case there is a vacancy a Government does not proceed within a period of one month to appoint as provided above a member of the Tribunal, such member shall be chosen by the other Government from the two persons mentioned above other than the president.

The decision of the majority of the members of the Tribunal shall be the decision of the Tribunal.

(b) The Mixed Arbitral Tribunals established pursuant to paragraph (a) shall decide all questions within their competence under Sections III, IV, V and VII.

In addition, all questions, whatsoever their nature, relating to contracts concluded before the coming into force of the present treaty between nationals of the Allied and Associated Powers and Hungarian nationals shall be decided by the Mixed Arbitral Tribunal, always excepting questions which, under the laws of the Allied, Associated or neutral Powers, are within the jurisdiction of the national courts of those Powers. Such questions shall be decided by the national courts in question, to the exclusion of the Mixed Arbitral Tribunal. The party who is a national of an Allied or Associated Power may nevertheless bring the case before the Mixed Arbitral Tribunal if this is not prohibited by the laws of his country.

(c) If the number of cases justifies it, additional members shall be appointed and each Mixed Arbitral Tribunal shall sit in divisions. Each of these divisions will be constituted as above.

(d) Each Mixed Arbitral Tribunal will settle its own procedure, except in so far as it is provided in the following annex, and is empowered to award sums to be paid by the loser in respect of the costs and expenses of the proceedings.

(e) Each Government will pay the remuneration of the member of the Mixed Arbitral Tribunal appointed by it and of any agent whom it may appoint to represent it before the Tribunal. The remuneration of the president will be

determined by special agreement between the Governments concerned; and this remuneration and the joint expenses of each Tribunal will be paid by the two Governments in equal moieties.

(f) The High Contracting Parties agree that their courts and authorities shall render to the Mixed Arbitral Tribunals direct all the assistance in their power, particularly as regards transmitting notices and collecting evidence.

(g) The High Contracting Parties agree to regard the decisions of the Mixed Arbitral Tribunal as final and conclusive, and to render them binding upon their nationals.

ANNEX.

1. Should one of the members of the Tribunal either die, retire or be unable for any reason whatever to discharge his functions, the same procedure will be followed for filling the vacancy as was followed for appointing him.

2. The Tribunal may adopt such rules of procedure as shall be in accordance with justice and equity and decide the order and time at which each party must conclude its arguments, and may arrange all formalities required for dealing with the evidence.

3. The agent and counsel of the parties on each side are authorized to present orally and in writing to the Tribunal arguments in support or in defence of each case.

4. The Tribunal shall keep record of the questions and cases submitted and the proceedings thereon, with the dates of such proceedings.

5. Each of the Powers concerned may appoint a secretary. These secretaries shall act together as joint secretaries of the Tribunal and shall be subject to its direction. The Tribunal may appoint and employ any other necessary officer or officers to assist in the performance of its duties.

6. The Tribunal shall decide all questions and matters submitted upon such evidence and information as may be furnished by the parties concerned.

7. The High Contracting Parties agree to give the Tribunal all facilities and information required by it for carrying out its investigations.

8. The language in which the proceedings shall be conducted shall, unless otherwise agreed, be English, French, Italian or Japanese, as may be determined by the Allied or Associated Power concerned.

9. The place and time for the meetings of each Tribunal shall be determined by the president of the Tribunal.

ARTICLE 240.

Whenever a competent court has given or gives a decision in a case covered by Sections III, IV, V or VII, and such decision is inconsistent with the provisions of such sections, the party who is prejudiced by the decision shall be entitled to obtain redress which shall be fixed by the Mixed Arbitral Tribunal. At the request of the national of an Allied or Associated Power, the redress may, whenever possible, be effected by the Mixed Arbitral Tribunal directing the replacement of the parties in the position occupied by them before the judgment was given by the court of the former Kingdom of Hungary.

SECTION VII.—INDUSTRIAL PROPERTY.

ARTICLE 241.

Subject to the stipulations of the present treaty, rights of industrial, literary and artistic property, as such property is defined by the International Conventions of Paris and of Berne, mentioned in Articles 220 and 222, shall be re-established or restored, as from the coming into force of the present treaty, in the territories of the High Contracting Parties, in favor of the persons entitled to the benefit of them at the moment when the state of war commenced, or their legal representatives. Equally, rights which, except for the war, would have been acquired during the war in consequence of an application made for the protection of industrial property, or the publication of a literary or artistic work, shall be recognized and established in favor of those persons who would have been entitled thereto, from the coming into force of the present treaty.

Nevertheless, all acts done by virtue of the special measures taken during the war under legislative, executive or administrative authority of any Allied or Associated Power, in regard to the rights of nationals of the former Kingdom of Hungary in industrial, literary or artistic property shall remain in force and shall continue to maintain their full effect.

No claim shall be made or action brought by Hungary or Hungarian nationals or by or on behalf of nationals of the former Kingdom of Hungary in respect of the use during the war by the Government of any Allied or Associated Power, or by any persons acting on behalf or with the assent of such Government of any rights in industrial, literary or artistic property, nor in respect of the sale, offering for sale, or use of any products, articles or apparatus whatsoever to which such rights applied.

Unless the legislation of any one of the Allied or Associated Powers in force at the moment of the signature of the present treaty otherwise directs, sums due or paid in respect of the property of persons referred to in Article 232 (b) in virtue of any act or operation resulting from the execution of the special measures mentioned in the second paragraph of this article shall be dealt with in the same way as other sums due to such persons are directed to be dealt with by the present treaty; and sums produced by any special measures taken by the Government of the former Kingdom of Hungary in respect of rights in industrial, literary or artistic property belonging to the nationals of the Allied or Associated Powers shall be considered and treated in the same way as other debts due from Hungarian nationals.

Each of the Allied and Associated Powers reserves to itself the right to impose such limitations, conditions or restrictions on rights of industrial, literary or artistic property (with the exception of trade marks) acquired before or during the war, or which may be subsequently acquired in accordance with its legislation, by Hungarian nationals; whether by granting licenses, or by the working, or by preserving control over their exploitation, or in any other way, as may be considered necessary for national defence, or in the public interest, or for assuring the fair treatment by Hungary of the rights of industrial,

literary and artistic property held in Hungarian territory by its nationals, or for securing the due fulfilment of all the obligations undertaken by Hungary in the present treaty. As regards rights of industrial, literary and artistic property acquired after the coming into force of the present treaty, the right so reserved by the Allied and Associated Powers shall only be exercised in cases where these limitations, conditions or restrictions may be considered necessary for national defence or in the public interest.

In the event of the application of the provisions of the preceding paragraph by any Allied or Associated Power, there shall be paid reasonable indemnities or royalties, which shall be dealt with in the same way as other sums due to Hungarian nationals are directed to be dealt with by the present treaty.

Each of the Allied or Associated Powers reserves the right to treat as void and of no effect any transfer in whole or in part of or other dealing with rights of or in respect of industrial, literary or artistic property effected after July 28, 1914, or in the future, which would have the result of defeating the objects of the provisions of this article.

The provisions of this article shall not apply to rights in industrial, literary or artistic property which have been dealt with in the liquidation of businesses or companies under war legislation by the Allied or Associated Powers, or which may be so dealt with by virtue of Article 232, paragraph (b).

ARTICLE 242.

A minimum of one year after the coming into force of the present treaty shall be accorded to the nationals of the High Contracting Parties, without extension fees or other penalty, in order to enable such persons to accomplish any act, fulfil any formality, pay any fees, and generally satisfy any obligation prescribed by the laws or regulations of the respective States relating to the obtaining, preserving or opposing rights to, or in respect of, industrial property either acquired before July 28, 1914, or which, except for the war, might have been acquired since that date as a result of an application made before the war or during its continuance, but nothing in this article shall give any right to re-open interference proceedings in the United States of America where a final hearing has taken place.

All rights in, or in respect of, such property which may have lapsed by reason of any failure to accomplish any act, fulfil any formality, or make any payment, shall revive, but subject in the case of patents and designs to the imposition of such conditions as each Allied or Associated Power may deem reasonably necessary for the protection of persons who have manufactured or made use of the subject-matter of such property while the rights had lapsed. Further, where rights to patents or designs belonging to Hungarian nationals are revived under this article, they shall be subject in respect of the grant of licenses to the same provisions as would have been applicable to them during the war, as well as to all the provisions of the present treaty.

The period from July 28, 1914, until the coming into force of the present treaty shall be excluded in considering the time within which a patent should be worked or a trade mark or design used, and it is further agreed that no

patent, registered trade mark or design in force on July 23, 1914, shall be subject to revocation or cancellation by reason only of the failure to work such patent or use such trade mark or design for two years after the coming into force of the present treaty.

ARTICLE 243.

The rights of priority provided by Article 4 of the International Convention for the Protection of Industrial Property of Paris of March 20, 1883, revised at Washington in 1911, or by any other convention or statute, for the filing or registration of applications for patents or models of utility, and for the registration of trade marks, designs and models which had not expired on July 23, 1914, and those which have arisen during the war, or would have arisen but for the war, shall be extended by each of the High Contracting Parties in favor of all nationals of the other High Contracting Parties for a period of six months after the coming into force of the present treaty.

Nevertheless, such extension shall in no way affect the right of any of the High Contracting Parties or of any person who before the coming into force of the present treaty was *bona fide* in possession of any rights of industrial property conflicting with rights applied for by another who claims rights of priority in respect of them, to exercise such rights by itself or himself personally, or by such agents or licensees as derived their rights from it or him before the coming into force of the present treaty: and such persons shall not be amenable to any action or other process of law in respect of infringement.

ARTICLE 244.

No action shall be brought and no claim made by nationals of the former Kingdom of Hungary, or by persons residing or carrying on business within the territory of that Kingdom on the one part, and on the other part by persons residing or carrying on business in the territory of the Allied or Associated Powers, or persons who are nationals of such Powers respectively, or by any one deriving title during the war from such persons, by reason of any action which has taken place within the territory of the other party between the date of the existence of a state of war and that of the coming into force of the present treaty, which might constitute an infringement of the rights of industrial property or rights of literary and artistic property, either existing at any time during the war or revived under the provisions of Articles 242 and 243.

Equally, no action for infringement of industrial, literary or artistic property rights by such persons shall at any time be permissible in respect of the sale or offering for sale for a period of one year after the signature of the present treaty in the territories of the Allied or Associated Powers on the one hand or Hungary on the other, of products or articles manufactured, or of literary or artistic works published, during the period between the existence of a state of war and the signature of the present treaty, or against those who have acquired and continue to use them. It is understood, nevertheless, that this provision shall not apply when the possessor of the rights was domiciled or had an industrial or commercial establishment in the districts occupied by the Austro-Hungarian armies during the war.

This article shall not apply as between the United States of America on the one hand and Hungary on the other.

ARTICLE 245.

Licenses in respect of industrial, literary or artistic property concluded before the war between nationals of the Allied or Associated Powers or persons residing in their territory or carrying on business therein, on the one part, and nationals of the former Kingdom of Hungary, on the other part, shall be considered as cancelled as from the date of the existence of a state of war between the former Austro-Hungarian Monarchy and the Allied or Associated Power. But, in any case, the former beneficiary of a contract of this kind shall have the right, within a period of six months after the coming into force of the present treaty, to demand from the proprietor of the rights the grant of a new license, the conditions of which, in default of agreement between the parties, shall be fixed by the duly qualified tribunal in the country under whose legislation the rights had been acquired, except in the case of licenses held in respect of rights acquired under the law of the former Kingdom of Hungary. In such cases the conditions shall be fixed by the Mixed Arbitral Tribunal referred to in Section VI of this part. The tribunal may, if necessary, fix also the amount which it may deem just should be paid by reason of the use of the rights during the war.

No license in respect of industrial, literary or artistic property, granted under the special war legislation of any Allied or Associated Power, shall be affected by the continued existence of any license entered into before the war, but shall remain valid and of full effect, and a license so granted to the former beneficiary of a license entered into before the war shall be considered as substituted for such license.

Where sums have been paid during the war in respect of the rights of persons referred to in Article 232 (b) by virtue of a license or agreement concluded before the war in respect of rights of industrial property or for the reproduction or the representation of literary, dramatic or artistic works, these sums shall be dealt with in the same manner as other debts or credits of such persons as provided by the present treaty.

This article shall not apply as between the United States of America on the one hand and Hungary on the other.

SECTION VIII.—SPECIAL PROVISIONS RELATING TO TRANSFERRED TERRITORY.

ARTICLE 246.

Of the individuals and juridical persons previously nationals of the former Kingdom of Hungary, including Bosnia-Herzegovinians, those who acquire *ipso facto* under the present treaty the nationality of an Allied or Associated Power are designated in the provisions which follow by the expression "nationals of the former Kingdom of Hungary"; the remainder are designated by the expression "Hungarian nationals."

ARTICLE 247.

The inhabitants of territories transferred by virtue of the present treaty shall, notwithstanding this transfer and the change of nationality consequent thereon, continue to enjoy in Hungary all the rights in industrial, literary and artistic property to which they were entitled under the legislation in force at the time of the transfer.

ARTICLE 248.

The questions concerning the nationals of the former Kingdom of Hungary, as well as Hungarian nationals, their rights, privileges and property, which are not dealt with in the present treaty, or in the treaty prepared for the purpose of regulating certain immediate relations between the States to which territory of the former Austro-Hungarian Monarchy has been transferred, or arising from the dismemberment of that Monarchy, shall form the subject of special conventions between the States concerned, including Hungary; such conventions shall not in any way conflict with the provisions of the present treaty.

For this purpose it is agreed that within three months from the coming into force of the present treaty a conference of delegates of the States in question shall take place.

ARTICLE 249.

The Hungarian Government shall without delay restore to nationals of the former Kingdom of Hungary their property, rights and interests situated in Hungarian territory.

The amount of taxes and imposts on capital which have been levied or increased on the property, rights and interests of nationals of the former Kingdom of Hungary since November 3, 1918, or which shall be levied or increased until restitution in accordance with the provisions of the present treaty, or, in the case of property, rights and interests which have not been subjected to exceptional measures of war, until three months from the coming into force of the present treaty, shall be returned to the owners.

The property, rights and interests restored shall not be subject to any tax levied in respect of any other property or any other business owned by the same person after such property had been removed from Hungary or such business had ceased to be carried on therein.

If taxes of any kind have been paid in anticipation in respect of property, rights and interests removed from Hungary, the proportion of such taxes paid for any period subsequent to the removal of the property, rights and interests in question shall be returned to the owners.

Cash assets shall be paid in the currency and at the rate of exchange provided for the case of debts under Articles 231 (*d*) and 254.

Legacies, donations and funds given or established in the former Kingdom of Hungary for the benefit of nationals of that kingdom shall be placed by Hungary so far as the funds in question are in her territory, at the disposition of the Allied or Associated Power of which the persons in question are now, or become, under the provisions of the present treaty, or of any treaties concluded for the purpose of completing the present settlement, nationals, in the

condition in which these funds were on July 28, 1914, taking account of payments properly made for the purpose of the trust.

Where under the terms of family trusts which continue to be administered by the Hungarian State the rights of the beneficiaries are subject to their retaining Hungarian nationality, the presumptive beneficiaries will retain their right to pensions, expenses of education, dowries and similar privileges, even if they acquire now or subsequently, under the present treaty or any treaties concluded for the purpose of completing the present settlement, the nationality of one of the States to which territory of the former Kingdom of Hungary is transferred by the said treaties.

Where in consequence of the extinction of a family in whose favor such a trust had been constituted the funds would revert to the Hungarian State or to an institution of that State, such right of succession will pass to the State to which the last beneficiary belonged.

ARTICLE 250.

Notwithstanding the provisions of Article 232 and the annex to Section IV the property, rights and interest of Hungarian nationals or companies controlled by them situated in the territories which formed part of the former Austro-Hungarian Monarchy shall not be subject to retention or liquidation in accordance with these provisions.

Such property, rights and interests shall be restored to their owners free from any measure of this kind, or from any other measure of transfer, compulsory administration or sequestration, taken since November 3, 1918, until the coming into force of the present treaty, in the condition in which they were before the application of the measures in question.

Claims made by Hungarian nationals under this article shall be submitted to the Mixed Arbitral Tribunal provided for by Article 239.

The property, rights and interests here referred to do not include property which is the subject of Article 191, Part IX (Financial Clauses).

Nothing in this article shall affect the provisions laid down in Part VIII (Reparation) Section I, Annex III as to property of Hungarian nationals in ships and boats.

ARTICLE 251.

All contracts for the sale of goods for delivery by sea concluded before January 1, 1917, between nationals of the former Kingdom of Hungary of the one part and the administrations of the former Austro-Hungarian Monarchy, Hungary, or Bosnia-Herzegovina, or Hungarian nationals of the other part shall be annulled, except in respect of any debt or other pecuniary obligation arising out of any act done or money paid thereunder. All other contracts between such parties which were made before November 1, 1918, and were in force at that date shall be maintained.

ARTICLE 252.

With regard to prescriptions, limitations and forfeitures in the transferred territories, the provisions of Articles 235 and 236 shall be applied with substi-

tution for the expression "outbreak of war" of the expression "date, which shall be fixed by administrative decision of each Allied or Associated Power, at which relations between the parties became impossible in fact or in law," and for the expression "duration of the war" of the expression "period between the date above indicated and that of the coming into force of the present treaty."

ARTICLE 253.

Hungary undertakes not to impede in any way the transfer of property, rights or interests belonging to a company incorporated in accordance with the laws of the former Austro-Hungarian Monarchy, in which Allied or Associated nationals are interested, to a company incorporated in accordance with the laws of any other Power, to facilitate all measures necessary for giving effect to such transfer, and to render any assistance which may be required for effecting the restoration to Allied or Associated nationals, or to companies in which they are interested, of their property, rights or interests whether in Hungary or in transferred territory.

ARTICLE 254.

Section III, except Article 231 (*d*), shall not apply to debts contracted between Hungarian nationals and nationals of the former Kingdom of Hungary.

Subject to the special provisions laid down in Article 231 (*d*) for the case of the new States, these debts shall be paid in the legal currency at the time of payment of the State of which the national of the former Kingdom of Hungary has become a national, and the rate of exchange applicable shall be the average rate quoted on the Geneva Exchange during the two months preceding November 1, 1918.

ARTICLE 255.

Insurance companies whose principal place of business was in territory which previously formed part of the former Austro-Hungarian Monarchy shall have the right to carry on their business in Hungarian territory for a period of ten years from the coming into force of the present treaty, without the rights which they previously enjoyed being affected in any way by the change of nationality.

During the above period the operations of such companies shall not be subjected by Hungary to any higher tax or charge than shall be imposed on the operations of national companies. No measure in derogation of their rights of property shall be imposed upon them which is not equally applied to the property, rights or interests of Hungarian insurance companies; adequate compensation shall be paid in the event of the application of any such measures.

These provisions shall only apply so long as Hungarian insurance companies previously carrying on business in the transferred territories, even if their principal place of business was outside such territories, are reciprocally accorded a similar right to carry on their business therein.

After the period of ten years above referred to, the provisions of Article 211 of the present treaty shall apply in regard to the Allied and Associated companies in question.

The provisions of this article shall apply similarly to co-operative societies, provided that the legal position of such societies places upon their members effective responsibility for all operations and contracts within the objects of such societies.

ARTICLE 256.

Special agreements will determine the division of the property of associations or public corporations carrying on their functions in territory which is divided in consequence of the present treaty.

ARTICLE 257.

States to which territory of the former Austro-Hungarian Monarchy is transferred, and States arising from the dismemberment of that monarchy, shall recognize and give effect to rights of industrial, literary and artistic property in force in the territory at the time when it passes to the State in question, or re-established or restored in accordance with the provisions of Article 241 of the present treaty. These rights shall remain in force in that territory for the same period as that for which they would have remained in force under the law of the former Austro-Hungarian Monarchy.

A special convention shall determine all questions relative to the records, registers and copies in connection with the protection of industrial, literary or artistic property, and fix their eventual transmission or communication by the offices of the former Austro-Hungarian Monarchy to the offices of the States to which are transferred territory of the said monarchy and to the offices of new States.

ARTICLE 258.

Without prejudice to other provisions of the present treaty, the Hungarian Government undertakes so far as it is concerned to hand over to any Power to which territory of the former Austro-Hungarian Monarchy is transferred, or which arises from the dismemberment of that monarchy, such portion of the reserves accumulated by the governments or the administrations of the former Austro-Hungarian Monarchy, or by public or private organizations under their control, as is attributable to the carrying on of social or State insurance in such territory.

The Powers to which these funds are handed over must apply them to the performance of the obligations arising from such insurances.

The conditions of the delivery will be determined by special conventions to be concluded between the Hungarian Government and the Governments concerned.

In case these special conventions are not concluded in accordance with the above paragraph within three months after the coming into force of the present treaty, the conditions of transfer shall in each case be referred to a commission of five members, one of whom shall be appointed by the Hungarian Government, one by the other interested Government and three by the Governing Body of the International Labor Office from the nationals of other States. This commission shall by majority vote within three months after appointment adopt

recommendations for submission to the Council of the League of Nations, and the decisions of the Council shall forthwith be accepted as final by Hungary and the other Government concerned.

ARTICLE 259.

The provisions of the present section referring to the relations between Hungary or Hungarian nationals and the nationals of the former Kingdom of Hungary apply to relations of the same nature between Hungary or Hungarian nationals and the nationals of the former Austrian Empire referred to in Article 263 of the Treaty of Peace with Austria.

Reciprocally, the provisions of Section VIII of Part X of the said treaty referring to the relations between Austria or Austrian nationals and the nationals of the former Austrian Empire apply to relations of the same nature between Austria or Austrian nationals and the nationals of the former Kingdom of Hungary referred to in Article 246 of the present treaty.

PART XI.—AERIAL NAVIGATION.

ARTICLE 260.

The aircraft of the Allied and Associated Powers shall have full liberty of passage and landing over and in the territory of Hungary, and shall enjoy the same privileges as Hungarian aircraft, particularly in case of distress.

ARTICLE 261.

The aircraft of the Allied and Associated Powers shall, while in transit to any foreign country whatever, enjoy the right of flying over the territory of Hungary without landing, subject always to any regulations which may be made by Hungary, and which shall be applicable equally to the aircraft of Hungary and to those of the Allied and Associated countries.

ARTICLE 262.

All aerodromes in Hungary open to national public traffic shall be open for the aircraft of the Allied and Associated Powers, and in any such aerodrome such aircraft shall be treated on a footing of equality with Hungarian aircraft as regards charges of every description, including charges for landing and accommodation.

ARTICLE 263.

Subject to the present provisions, the rights of passage, transit and landing provided for in Articles 260, 261 and 262 are subject to the observance of such regulations as Hungary may consider it necessary to enact, but such regulations shall be applied without distinction to Hungarian aircraft and to those of the Allied and Associated countries.

ARTICLE 264.

Certificates of nationality, airworthiness, or competency and licenses, issued or recognized as valid by any of the Allied or Associated Powers, shall be

recognized in Hungary as valid and as equivalent to the certificates and licenses issued by Hungary.

ARTICLE 265.

As regards internal commercial air traffic, the aircraft of the Allied and Associated Powers shall enjoy in Hungary most-favored nation treatment.

ARTICLE 266.

Hungary undertakes to enforce the necessary measures to insure that all Hungarian aircraft flying over her territory shall comply with the rules as to lights and signals, rules of the air and rules for air traffic on and in the neighborhood of aerodromes, which have been laid down in the Convention Relative to Aerial Navigation concluded between the Allied and Associated Powers.

ARTICLE 267.

The obligations imposed by the preceding provisions shall remain in force until January 1, 1923, unless before that date Hungary shall have been admitted into the League of Nations or shall have been authorized by consent of the Allied and Associated Powers to adhere to the Convention Relative to Aerial Navigation concluded between those Powers.

PART XII.—PORTS, WATERWAYS AND RAILWAYS.

SECTION I.—GENERAL PROVISIONS.

ARTICLE 268.

Hungary undertakes to grant freedom of transit through her territories on the routes most convenient for international transit, either by rail, navigable waterway or canal, to persons, goods, vessels, carriages, wagons and mails coming from or going to the territories of any of the Allied and Associated Powers, whether contiguous or not.

Such persons, goods, vessels, carriages, wagons and mails shall not be subjected to any transit duty or to any undue delays or restrictions, and shall be entitled in Hungary to national treatment as regards charges, facilities and all other matters.

Goods in transit shall be exempt from all customs or other similar duties.

All charges imposed on transport in transit shall be reasonable, having regard to the conditions of the traffic. No charge, facility or restriction shall depend directly or indirectly on the ownership or on the nationality of the ship or other means of transport on which any part of the thorough journey has been, or is to be, accomplished.

ARTICLE 269.

Hungary undertakes neither to impose nor to maintain any control over transmigration traffic through her territories beyond measures necessary to

insure that passengers are *bona fide* in transit; nor to allow any shipping company or any other private body, corporation or person interested in the traffic to take any part whatever in, or to exercise any direct or indirect influence over, any administrative service that may be necessary for this purpose.

ARTICLE 270.

Hungary undertakes to make no discrimination or preference, direct or indirect, in the duties, charges and prohibitions relating to importations into or exportations from her territories, or, subject to the special engagements contained in the present treaty, in the charges and conditions of transport of goods or persons entering or leaving her territories, based on the frontier crossed; or on the kind, ownership or flag of the means of transport (including aircraft) employed; or on the original or immediate place of departure of the vessel, wagon or aircraft, or other means of transport employed, or its ultimate or intermediate destination, or on the route of or places of transshipment on the journey; or on whether the goods are imported or exported directly through a Hungarian port or indirectly through a foreign port; or on whether the goods are imported or exported by land or by air.

Hungary particularly undertakes not to establish against the ports and vessels of any of the Allied and Associated Powers any surtax or any direct or indirect bounty for export or import by Hungarian ports or ships, or by those of another Power, for example by means of combined tariffs. She further undertakes that persons or goods passing through a port or using a vessel of any of the Allied and Associated Powers shall not be subjected to **any formality or** delay whatever to which such persons or goods would not be subjected if they passed through a Hungarian port or a port of any other Power, or used a Hungarian vessel or a vessel of any other Power.

ARTICLE 271.

All necessary administrative and technical measures shall be taken to expedite, as much as possible, the transmission of goods across the Hungarian frontiers and to insure their forwarding and transport from such frontiers, irrespective of whether such goods are coming from or going to the territories of the Allied and Associated Powers or are in transit from or to those territories, under the same material conditions in such matters as rapidity of carriage and care *en route* as are enjoyed by other goods of the same kind carried on Hungarian territory under similar conditions of transport.

In particular, the transport of perishable goods shall be promptly and regularly carried out, and the customs formalities shall be effected in such a way as to allow the goods to be carried straight through by trains which make connection.

ARTICLE 272.

The seaports of the Allied and Associated Powers are entitled to all favors and to all reduced tariffs granted on Hungarian railways or navigable waterways for the benefit of any port of another Power.

ARTICLE 273.

Hungary may not refuse to participate in the tariffs or combinations of tariffs intended to secure for ports of any of the Allied and Associated Powers advantages similar to those granted by Hungary to the ports of any other Power.

SECTION II.—NAVIGATION.

CHAPTER I.—FREEDOM OF NAVIGATION.

ARTICLE 274.

The nationals of any of the Allied and Associated Powers, as well as their vessels and property, shall enjoy in all Hungarian ports and on the inland navigation routes of Hungary the same treatment in all respects as Hungarian nationals, vessels and property.

In particular, the vessels of any one of the Allied or Associated Powers shall be entitled to transport goods of any description, and passengers, to or from any ports or places in Hungarian territory to which Hungarian vessels may have access, under conditions which shall not be more onerous than those applied in the case of national vessels; they shall be treated on a footing of equality with national vessels as regards port and harbor facilities and charges of every description, including facilities for stationing, loading and unloading, and duties and charges of tonnage, harbor, pilotage, lighthouse, quarantine, and all analogous duties and charges of whatsoever nature, levied in the name of or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind.

In the event of Hungary granting a preferential régime to any of the Allied or Associated Powers or to any other foreign Power, this régime shall be extended immediately and unconditionally to all the Allied and Associated Powers.

There shall be no impediment to the movement of persons or vessels other than those arising from prescriptions concerning customs, police, sanitation, emigration and immigration, and those relating to the import and export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

CHAPTER II.—CLAUSES RELATING TO THE DANUBE.

1. *General Clauses relative to River Systems declared International.*

ARTICLE 275.

The following river is declared international: the Danube from Ulm; together with all navigable parts of this river system which naturally provide more than one State with access to the sea, with or without transshipment from one vessel to another, as well as lateral canals and channels constructed either to duplicate or to improve naturally navigable sections of the specified river system or to connect two naturally navigable sections of the same river.

Any part of the above-mentioned river system which is not included in the general definition may be declared international by an agreement between the riparian States.

ARTICLE 276.

On the waterways declared to be international in the preceding article, the nationals, property and flags of all Powers shall be treated on a footing of perfect equality, no distinction being made, to the detriment of the nationals, property or flag of any Power, between them and the nationals, property or flag of the riparian State itself or of the most-favored nation.

ARTICLE 277.

Hungarian vessels shall not be entitled to carry passengers or goods by regular services between the ports of any Allied or Associated Power without special authority from such Power.

ARTICLE 278.

Where such charges are not precluded by any existing convention, charges varying on different sections of a river may be levied on vessels using the navigable channels or their approaches, provided that they are intended solely to cover equitably the cost of maintaining in a navigable condition, or of improving, the river and its approaches, or to meet expenditure incurred in the interests of navigation. The schedule of such charges shall be calculated on the basis of such expenditure and shall be posted up in the ports. These charges shall be levied in such a manner as to render any detailed examination of cargoes unnecessary, except in cases of suspected fraud or contravention.

ARTICLE 279.

The transit of vessels, passengers and goods on these waterways shall be effected in accordance with the general conditions prescribed for transit in Section I above.

When the two banks of an international river are within the same State goods in transit may be placed under seal or in the custody of customs agents. When the river forms a frontier goods and passengers in transit shall be exempt from all customs formalities; the loading and unloading of goods, and the embarkation and disembarkation of passengers, shall only take place in the ports specified by the riparian State.

ARTICLE 280.

No dues of any kind other than those provided for in this part shall be levied along the course or at the mouth of these waterways.

This provision shall not prevent the fixing by the riparian States of customs, local *octroi* or consumption duties, or the creation of reasonable and uniform charges levied in the ports, in accordance with public tariffs, for the use of cranes, elevators, quays, warehouses and other similar constructions.

ARTICLE 281.

In default of any special organization for carrying out the works connected with the upkeep and improvement of the international portion of a navigable system, each riparian State shall be bound to take the necessary measures to remove any obstacle or danger to navigation and to ensure the maintenance of good conditions of navigation.

If a State neglects to comply with this obligation any riparian State, or any State represented on the International Commission, may appeal to the tribunal instituted for this purpose by the League of Nations.

ARTICLE 282.

The same procedure shall be followed in the case of a riparian State undertaking any works of a nature to impede navigation in the international section. The tribunal mentioned in the preceding article shall be entitled to enforce the suspension or suppression of such works, making due allowance in its decisions for all rights in connection with irrigation, water-power, fisheries and other national interests, which, with the consent of all the riparian States or of all the States represented on the International Commission, shall be given priority over the requirements of navigation.

Appeal to the tribunal of the League of Nations does not require the suspension of the works.

ARTICLE 283.

The régime set out in Articles 276 and 278 to 282 above shall be superseded by one to be laid down in a general convention drawn up by the Allied and Associated Powers, and approved by the League of Nations, relating to the waterways recognized in such convention as having an international character. This convention shall apply in particular to the whole or part of the above-mentioned river system of the Danube, and such other parts of that river system as may be covered by a general definition.

Hungary undertakes, in accordance with the provisions of Article 314, to adhere to the said general convention.

ARTICLE 284.

Hungary shall cede to the Allied and Associated Powers concerned, within a maximum period of three months from the date on which notification shall be given her, a proportion of the tugs and vessels remaining registered in the ports of the river system referred to in Article 275 after the deduction of those surrendered by way of restitution or reparation. Hungary shall in the same way cede material of all kinds necessary to the Allied and Associated Powers concerned for the utilization of that river system.

The number of the tugs and vessels and the amount of the material so ceded, and their distribution, shall be determined by an arbitrator or arbitrators nominated by the United States of America, due regard being had to the legitimate needs of the parties concerned, and particularly to the shipping traffic during the five years preceding the war.

All craft so ceded shall be provided with their fittings and gear, shall be in a good state of repair and in condition to carry goods, and shall be selected from among those most recently built.

Wherever the cessions made under the present article involve a change of ownership, the arbitrator or arbitrators shall determine the rights of the former owners as they stood on October 15, 1918, and the amount of the compensation to be paid to them, and shall also direct the manner in which such payment is to be effected in each case. If the arbitrator or arbitrators find that the whole or part of this sum will revert directly or indirectly to States from whom reparation is due, they shall decide the sum to be placed under this head to the credit of the said States.

As regards the Danube the arbitrator or arbitrators referred to in this article will also decide all questions as to the permanent allocation and the conditions thereof of the vessels whose ownership or nationality is in dispute between States.

Pending final allocation the control of these vessels shall be vested in a commission consisting of representatives of the United States of America, the British Empire, France and Italy, who will be empowered to make provisional arrangements for the working of these vessels in the general interest by any local organization, or failing such arrangements by themselves, without prejudice to the final allocation.

As far as possible these provisional arrangements will be on a commercial basis, the net receipts by the commission for the hire of these vessels being disposed of as directed by the Reparation Commission.

2. Special Clauses relating to the Danube.

ARTICLE 285.

The European Commission of the Danube reassumes the powers it possessed before the war. Nevertheless, as a provisional measure, only representatives of Great Britain, France, Italy and Roumania shall constitute this commission.

ARTICLE 286.

From the point where the competence of the European Commission ceases, the Danube system referred to in Article 275 shall be placed under the administration of an International Commission composed as follows:

Two representatives of German riparian States;

One representative of each other riparian State;

One representative of each non-riparian State represented in the future on the European Commission of the Danube.

If certain of these representatives cannot be appointed at the time of the coming into force of the present treaty, the decisions of the Commission shall nevertheless be valid.

ARTICLE 287.

The International Commission provided for in the preceding article shall meet as soon as possible after the coming into force of the present treaty, and

shall undertake provisionally the administration of the river in conformity with the provisions of Articles 276 and 278 to 282, until such time as a definitive statute regarding the Danube is concluded by the Powers nominated by the Allied and Associated Powers.

The decisions of this International Commission shall be taken by a majority vote. The salaries of the commissioners shall be fixed and paid by their respective countries.

As a provisional measure, any deficit in the administrative expenses of this International Commission shall be borne equally by the States represented on the commission.

In particular this commission shall regulate the licensing of pilots, charges for pilotage and the administration of the pilot service.

ARTICLE 288.

Hungary agrees to accept the régime which shall be laid down for the Danube by a conference of the Powers nominated by the Allied and Associated Powers, which shall meet within one year after the coming into force of the present treaty, and at which Hungarian representatives may be present.

Until such time as a definite statute regarding the Danube is concluded, the International Commission provided for in Article 286 shall have provisionally under its control the equipment buildings and installations used for carrying out and maintaining works on the section of the Danube between Turnu-Severin and Moldava. The final allocation of the equipment, buildings and installations shall be determined by the conference provided for in the preceding paragraph.

Hungary renounces all interest in and all control over the said equipment, buildings and installations.

ARTICLE 289.

The mandate given by Article 57 of the Treaty of Berlin of July 13, 1878, to Austria-Hungary, and transferred by her to Hungary, to carry out works at the Iron Gates, is abrogated. The Commission entrusted with the administration of this part of the river shall lay down provisions for the settlement of accounts subject to the financial provisions of the present treaty. Charges which may be necessary shall in no case be levied by Hungary.

ARTICLE 290.

Should the Czecho-Slovak State, the Serb-Croat-Slovene State or Roumania, with the authorization of or under mandate from the International Commission, undertake maintenance, improvement, weir, or other works on a part of the river system which forms a frontier, these States shall enjoy on the opposite bank, and also on the part of the bed which is outside their territory, all necessary facilities for the survey, execution and maintenance of such works.

ARTICLE 291.

Hungary shall be obliged to make to the European Commission of the Danube all restitutions, reparations and indemnities for damages inflicted on the Commission during the war.

CHAPTER III.—HYDRAULIC SYSTEM.

ARTICLE 292.

In default of any provisions to the contrary, when as the result of the fixing of a new frontier the hydraulic system (canalization, inundations, irrigation, drainage, or similar matters) in a State is dependent on works executed within the territory of another State, or when use is made on the territory of a State, in virtue of pre-war usage, of water or hydraulic power, the source of which is on the territory of another State, an agreement shall be made between the States concerned to safeguard the interests and rights acquired by each of them.

Unless otherwise provided, when use is made for municipal or domestic purposes in one State of electricity or water, the source of which as the result of the fixing of a new frontier is on the territory of another State, an agreement shall be made between the States concerned to safeguard the interests and rights acquired by each of them. Pending an agreement, central electric stations and waterworks shall be required to continue the supply up to an amount corresponding to the undertakings and contracts in force on November 3, 1918.

Failing an agreement in the case of either of the above paragraphs, and subject to the provisions of Article 293, the matter shall be regulated by an arbitrator appointed by the Council of the League of Nations.

ARTICLE 293.

In view of the application of Article 292 to the territories of the former Kingdom of Hungary forming the Basin of the Danube, excluding the Basin of the Olt, as well as for the exercise of the powers provided for below, there shall be set up, in the common interest of the States possessing sovereignty over the territories in question, a permanent technical Hydraulic System Commission, composed of one representative of each of the States territorially concerned and a chairman appointed by the Council of the League of Nations.

This Commission shall bring about the conclusion, and supervise and, in urgent cases, ensure the carrying out, of the agreements provided for in Article 292; it shall maintain and improve, particularly as regards deforestation and afforestation, the uniform character of the hydraulic system, as well as of the services connected therewith, such as the hydrometric service and the service of information as to the rising of the waters. It shall also study questions relating to navigation, excepting those falling within the competence of the Commission for regulating the navigation of the Upper Danube, which it shall refer to the said Commission, and it shall give special consideration to fishery interests. The Commission shall in addition undertake all works or schemes, and shall establish all services with which it may be charged by the unanimous consent of the interested States.

The Hydraulic System Commission shall meet within three months from the coming into force of the present treaty; it shall draw up a regulation as to its functions and procedure, which will be subject to approval by the States concerned.

Any disputes which may arise out of the matters dealt with in this article shall be settled as provided by the League of Nations.

SECTION III.—RAILWAYS.

CHAPTER I.—FREEDOM OF TRANSIT TO THE ADRIATIC FOR HUNGARY.

ARTICLE 294.

Free access to the Adriatic Sea is accorded to Hungary, who with this object will enjoy freedom of transit over the territories and in the ports severed from the former Austro-Hungarian Monarchy.

Freedom of transit is the freedom defined in Article 268 until such time as a general convention on the subject shall have been concluded between the Allied and Associated Powers, whereupon the dispositions of the new convention shall be substituted therefor.

Special conventions between the States or administrations concerned will lay down the conditions of the exercise of the right accorded above, and will settle in particular the method of using the ports and the free zones existing in them, and the railways ordinarily giving access thereto, the establishment of international (joint) services and tariffs, including through tickets and way-bills, and the maintenance of the Convention of Berne of October 14, 1890, and its supplementary provisions until its replacement by a new convention.

Freedom of transit will extend to postal, telegraphic and telephonic services.

CHAPTER II.—CLAUSES RELATING TO INTERNATIONAL TRANSPORT.

ARTICLE 295.

Goods coming from the territories of the Allied and Associated Powers and going to Hungary, or in transit through Hungary from or to the territories of the Allied and Associated Powers, shall enjoy on the Hungarian railways as regards charges to be collected (rebates and drawbacks being taken into account), facilities, and all other matters, the most favorable treatment applied to goods of the same kind carried on any Hungarian lines, either in internal traffic, or for export, import or in transit, under similar conditions of transport, for example as regards length of route. The same rule shall be applied, on the request of one or more of the Allied and Associated Powers, to goods specially designated by such Power or Powers coming from Hungary and going to their territories.

International tariffs established in accordance with the rates referred to in the preceding paragraph and involving through way-bills shall be established when one of the Allied and Associated Powers shall require it from Hungary.

However, without prejudice to the provisions of Articles 272 and 273, Hungary undertakes to maintain on her own lines the régime of tariffs existing before the war as regards traffic to Adriatic and Black Sea ports, from the point of view of competition with North German ports.

ARTICLE 296.

From the coming into force of the present treaty the High Contracting Parties shall renew, in so far as concerns them and under the reserves indicated in the second paragraph of the present article, the conventions and arrangements signed at Berne on October 14, 1890, September 20, 1893, July 16, 1895, June 16, 1898, and September 19, 1906, regarding the transportation of goods by rail.

If within five years from the date of the coming into force of the present treaty a new convention for the transportation of passengers, luggage and goods by rail shall have been concluded to replace the Berne Convention of October 14, 1890, and the subsequent additions referred to above, this new convention and the supplementary provisions for international transport by rail which may be based on it shall bind Hungary, even if she shall have refused to take part in the preparation of the convention or to subscribe to it. Until a new convention shall have been concluded, Hungary shall conform to the provisions of the Berne Convention and the subsequent additions referred to above and to the current supplementary provisions.

ARTICLE 297.

Hungary shall be bound to co-operate in the establishment of through ticket services (for passengers and their luggage) which shall be required by any of the Allied and Associated Powers to ensure their communication by rail with each other and with all other countries by transit across the territories of Hungary; in particular Hungary shall for this purpose accept trains and carriages coming from the territories of the Allied and Associated Powers and shall forward them with a speed at least equal to that of her best long-distance trains on the same lines. The rates applicable to such through services shall not in any case be higher than the rates collected on Hungarian internal services for the same distance, under the same conditions of speed and comfort.

The tariffs applicable under the same conditions of speed and comfort to the transportation of emigrants going to or coming from ports of the Allied and Associated Powers and using the Hungarian railways shall not be at a higher kilometric rate than the most favorable tariffs (drawbacks and rebates being taken into account) enjoyed on the said railways by emigrants going to or coming from any other ports.

ARTICLE 298.

Hungary shall not apply specially to such through services, or to the transportation of emigrants going to or coming from ports of the Allied and Associated Powers, any technical, fiscal or administrative measures, such as measures of customs examination, general police, sanitary police, and control, the result of which would be to impede or delay such services.

ARTICLE 299.

In case of transport partly by rail and partly by internal navigation, with or without through way-bill, the preceding articles shall apply to the part of the journey performed by rail.

CHAPTER III.—ROLLING STOCK.

ARTICLE 300.

Hungary undertakes that Hungarian wagons shall be fitted with apparatus allowing:

(1) of their inclusion in goods trains on the lines of such of the Allied and Associated Powers as are parties to the Berne Convention of May 15, 1886, as modified on May 18, 1907, without hampering the action of the continuous brake which may be adopted in such countries within ten years of the coming into force of the present treaty, and

(2) of the inclusion of wagons of such countries in all goods trains on Hungarian lines.

The rolling-stock of the Allied and Associated Powers shall enjoy on the Hungarian lines the same treatment as Hungarian rolling-stock as regards movement, upkeep and repairs.

CHAPTER IV.—TRANSFERS OF RAILWAY LINES.

ARTICLE 301.

Subject to any special provisions concerning the transfer of ports, waterways and railways situated in the territories transferred under the present treaty, and to the financial conditions relating to the concessionaires and the pensioning of the personnel, the transfer of railways will take place under the following conditions:—

(1) The works and installations of all the railroads shall be handed over complete and in good condition.

(2) When a railway system possessing its own rolling-stock is handed over in its entirety by Hungary to one of the Allied and Associated Powers, such stock shall be handed over complete, in accordance with the last inventory before November 3, 1918, and in a normal state of upkeep.

(3) As regards lines without any special rolling-stock, the distribution of the stock existing on the system to which these lines belong shall be made by commissions of experts designated by the Allied and Associated Powers, on which Hungary shall be represented. These commissions shall have regard to the amount of the material registered on these lines in the last inventory before November 3, 1918, to the length of track (sidings included), and the nature and amount of the traffic. These commissions shall also specify the locomotives, carriages and wagons to be handed over in each case; they shall decide upon the conditions of their acceptance, and shall make the provisional arrangements necessary to ensure their repair in Hungarian workshops.

(4) Stocks of stores, fittings and plant shall be handed over under the same conditions as the rolling-stock.

The provisions of paragraphs 3 and 4 above shall be applied to the lines of former Russian Poland converted by the Austro-Hungarian authorities to the normal gauge, such lines being regarded as detached from the Austrian and Hungarian State systems.

CHAPTER V.—PROVISIONS RELATING TO CERTAIN RAILWAY LINES.

ARTICLE 302.

When, as a result of the fixing of new frontiers, a railway connection between two parts of the same country crosses another country, or a branch line from one country has its terminus in another, the conditions of working, if not specifically provided for in the present treaty, shall be laid down in a convention between the railway administrations concerned. If the administrations cannot come to an agreement as to the terms of such convention, the points of difference shall be decided by commissions of experts composed as provided in the preceding article.

In particular, the convention as to the working of the line between Csata and Losonez shall provide for the direct passage in each direction through Hungarian territory of Czecho-Slovak trains with Czecho-Slovak traction and Czecho-Slovak train crews. Nevertheless, unless otherwise agreed, this right of passage shall lapse either on the completion of a direct connection wholly in Czecho-Slovak territory between Csata and Losonez or at the expiration of fifteen years from the coming into force of the present treaty, whichever may occur first.

Similarly, the convention as to the working of the portion in Hungarian territory of the line from Nagyszalonta through Békéscsaba to Arad and to Kisjenő shall provide for the direct passage in each direction through Hungarian territory of Roumanian trains with Roumanian traction and Roumanian train crews. Unless otherwise agreed this right of passage shall lapse either on the completion of a direct connection wholly in Roumanian territory between the Nagyszalonta-Békéscsaba and the Kisjenő-Békéscsaba lines or at the expiration of ten years from the coming into force of the present treaty.

The establishment of all the new frontier stations between Hungary and the contiguous Allied and Associated States, as well as the working of the lines between those stations, shall be settled by agreements similarly concluded.

ARTICLE 303.

In order to assure to the town and district of Gola in Serb-Croat-Slovene territory the use of the station of Gola in Hungarian territory and of the railway serving the same, and in order to ensure the free use to Serb-Croat-Slovene traffic of direct railway connection between the Csáktornya-Nagy-Kanisza line and the Zágráb-Gyékenyész line during the time required for the completion of a direct railway in Serb-Croat-Slovene territory between the above lines, the conditions of working of the station of Gola and of the railway from Kotor to Barez shall be laid down in a convention between the Hungarian and Serb-Croat-Slovene railway administrations concerned. If these administrations cannot come to an agreement as to the terms of such convention, the points of difference shall be decided by the competent commission of experts referred to in Article 301 of the present treaty.

ARTICLE 304.

With the object of ensuring regular utilization of the railroads of the former Austro-Hungarian Monarchy owned by private companies which, as a result of the stipulations of the present treaty, will be situated in the territory of several States, the administrative and technical reorganization of the said lines shall be regulated in each instance by an agreement between the owning company and the States territorially concerned.

Any differences on which agreement is not reached, including questions relating to the interpretation of contracts concerning the expropriation of the lines, shall be submitted to arbitrators designated by the Council of the League of Nations.

This arbitration may, as regards the South Austrian Railway Company, be required either by the board of management or by the committee representing the bondholders.

ARTICLE 305.

Within a period of five years from the coming into force of the present treaty, the Czecho-Slovak State may require the improvement of the Bratislava (Pressburg)-Nagy-Kanisza line on Hungarian territory.

The expenses shall be divided in proportion to the advantages derived by the interested States. Failing agreement, such division shall be made by an arbitrator appointed by the League of Nations.

ARTICLE 306.

In view of the importance to the Czecho-Slovak State of free communication between that State and the Adriatic, Hungary recognizes the right of the Czecho-Slovak State to run its own trains over the sections included within her territory of the following lines:

(1) from Bratislava (Pressburg) towards Fiume via Sopron, Szombathely and Mura-Keresztur, and a branch from Mura-Keresztur towards Pragerhof;

(2) from Bratislava (Pressburg) towards Fiume via Hegyeshalon, Csorna, Hegyfalú, Zalaber, Zalaszentiván, Mura-Keresztur, and the branch lines from Hegyfalú to Szombathely and from Mura-Keresztur to Pragerhof.

On the application of either party, the route to be followed by the Czecho-Slovak trains may be modified either permanently or temporarily by mutual agreement between the Czecho-Slovak Railway Administration and those of the railways over which the running powers are exercised.

ARTICLE 307.

The trains for which the running powers are used shall not engage in local traffic, except by agreement between the State traversed and the Czecho-Slovak State.

Such running powers will include, in particular, the right to establish running sheds with small shops for minor repairs to locomotives and rolling-stock, and to appoint representatives where necessary to supervise the working of Czecho-Slovak trains.

The technical, administrative and financial conditions under which the rights of the Czecho-Slovak State shall be exercised shall be laid down in a convention between the railway administration of the Czecho-Slovak State and the railway administrations of the Hungarian systems concerned. If the administrations cannot come to an agreement on the terms of this convention, the points of difference shall be decided by an arbitrator nominated by Great Britain, and his decisions shall be binding on all parties.

In the event of disagreement as to the interpretation of the convention or of difficulties arising unprovided for in the convention, the same form of arbitration will be adopted until such time as the League of Nations may lay down some other procedure.

CHAPTER VI.—TRANSITORY PROVISION.

ARTICLE 308.

Hungary shall carry out the instructions given her, in regard to transport, by an authorized body acting on behalf of the Allied and Associated Powers:

(1) for the carriage of troops under the provisions of the present treaty, and of material, ammunition and supplies for army use;

(2) as a temporary measure, for the transportation of supplies for certain regions, as well as for the restoration, as rapidly as possible, of the normal conditions of transport, and for the organization of postal and telegraphic services.

CHAPTER VII.—TELEGRAPHS AND TELEPHONES.

ARTICLE 309.

Notwithstanding any contrary stipulations in existing treaties, Hungary undertakes to grant freedom of transit for telegraphic correspondence and telephonic communications coming from or going to any one of the Allied and Associated Powers, whether neighbors or not, over such lines as may be most suitable for international transit and in accordance with the tariffs in force. This correspondence and these communications shall be subjected to no delay or restriction; they shall enjoy in Hungary national treatment in regard to every kind of facility and especially in regard to rapidity of transmission. No payment, facility or restriction shall depend directly or indirectly on the nationality of the transmitter or the addressee.

ARTICLE 310.

In view of the geographical situation of the Czecho-Slovak State, Hungary agrees to the following modifications in the International Telegraph and Telephone Conventions referred to in Article 218, Part X (Economic Clauses), of the present treaty:

(1) On the demand of the Czecho-Slovak State, Hungary shall provide and maintain trunk telegraph lines across Hungarian territory.

(2) The annual rent to be paid by the Czecho-Slovak State for each of such lines will be calculated in accordance with the provisions of the above-mentioned conventions, but unless otherwise agreed shall not be less than the sum which

would be payable under those conventions for the number of messages laid down in those conventions as conferring the right to demand a new trunk line, taking as a basis the reduced tariff provided for in Article 23, paragraph 5, of the International Telegraph Convention as revised at Lisbon.

(3) So long as the Czecho-Slovak State shall pay the above minimum annual rent of a trunk line:

(a) The line shall be reserved exclusively for transit traffic to and from the Czecho-Slovak State;

(b) The faculty given to Hungary by Article 8 of the International Telegraph Convention of July 22, 1875, to suspend international telegraph services shall not apply to that line.

(4) Similar provisions will apply to the provision and maintenance of trunk telephone circuits, but the rent payable by the Czecho-Slovak State for a trunk telephone circuit shall, unless otherwise agreed, be double the rent payable for a trunk telegraph line.

(5) The particular lines to be provided, together with any necessary administrative, technical and financial conditions not provided for in existing international conventions or in this article, shall be fixed by a further convention between the States concerned. In default of agreement on such convention they will be fixed by an arbitrator appointed by the Council of the League of Nations.

(6) The stipulations of the present article may be varied at any time by agreement between Hungary and the Czecho-Slovak State. After the expiration of ten years from the coming into force of the present treaty the conditions under which the Czecho-Slovak State shall enjoy the rights conferred by this article may, in default of agreement by the parties, be modified at the request of either party by an arbitrator designated by the Council of the League of Nations.

(7) In case of any dispute between the parties as to the interpretation either of this article or of the convention referred to in paragraph 5, this dispute shall be submitted for decision to the Permanent Court of International Justice to be established by the League of Nations.

SECTION IV.—DISPUTES AND REVISION OF PERMANENT CLAUSES.

ARTICLE 311.

Disputes which may arise between interested Powers with regard to the interpretation and application of this part of the present treaty shall be settled as provided by the League of Nations.

ARTICLE 312.

At any time the League of Nations may recommend the revision of such of the above articles as relate to a permanent administrative régime.

ARTICLE 313.

The stipulations in Articles 268 to 274, 277, 295, 297 to 299 and 309 shall be subject to revision by the Council of the League of Nations at any time after three years from the coming into force of the present treaty.

Failing such revision, no Allied or Associated Power can claim after the expiration of the above period of three years the benefit of any of the stipulations in the Articles enumerated above on behalf of any portion of its territories in which reciprocity is not accorded in respect of such stipulations. The period of three years during which reciprocity cannot be demanded may be prolonged by the Council of the League of Nations.

The benefit of the stipulations mentioned above cannot be claimed by States to which territory of the former Austro-Hungarian Monarchy has been transferred, or which have arisen out of the dismemberment of that monarchy, except upon the footing of giving in the territory passing under their sovereignty in virtue of the present treaty reciprocal treatment to Hungary.

SECTION V.—SPECIAL PROVISION.

ARTICLE 314.

Without prejudice to the special obligations imposed on her by the present treaty for the benefit of the Allied and Associated Powers, Hungary undertakes to adhere to any general conventions regarding the international régime of transit, waterways, ports or railways which may be concluded by the Allied and Associated Powers, with the approval of the League of Nations, within five years of the coming into force of the present treaty.

PART XIII.—LABOR.

SECTION I.—ORGANIZATION OF LABOR.

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labor exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labor supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity

as well as by the desire to secure the permanent peace of the world, agree to the following:

CHAPTER I.—ORGANIZATION.

ARTICLE 315.

A permanent organization is hereby established for the promotion of the objects set forth in the preamble.

The original members of the League of Nations shall be the original members of this organization, and hereafter membership of the League of Nations shall carry with it membership of the said organization.

ARTICLE 316.

The permanent organization shall consist of:

- (1) a General Conference of representatives of the members, and
- (2) an International Labor Office controlled by the Governing body described in Article 321.

ARTICLE 317.

The meetings of the General Conference of representatives of the members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four representatives of each of the members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the members.

Each delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

The members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

Advisers shall not speak except on a request made by the delegate whom they accompany and by the special authorization of the president of the Conference, and may not vote.

A delegate may by notice in writing addressed to the president appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the delegates and their advisers will be communicated to the International Labor Office by the Government of each of the members.

The credentials of delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with this article.

ARTICLE 318.

Every delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

If one of the members fails to nominate one of the non-Government delegates whom it is entitled to nominate, the other non-Government delegate shall be allowed to sit and speak at the Conference, but not to vote.

If in accordance with Article 317 the Conference refuses admission to a delegate of one of the members, the provisions of the present article shall apply as if that delegate had not been nominated.

ARTICLE 319.

The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the delegates present.

ARTICLE 320.

The International Labor Office shall be established at the seat of the League of Nations as part of the organization of the League.

ARTICLE 321.

The International Labor Office shall be under the control of a Governing Body consisting of twenty-four persons, appointed in accordance with the following provisions:

The Governing Body of the International Labor Office shall be constituted as follows:

Twelve persons representing the Governments;

Six persons elected by the delegates to the conference representing the employers;

Six persons elected by the delegates to the conference representing the workers.

Of the twelve persons representing the Governments eight shall be nominated by the members which are of the chief industrial importance, and four shall be nominated by ~~the~~ members selected for the purpose by the Government delegates to the conference, excluding the delegates of the eight members mentioned above.

Any question as to which are the members of the chief industrial importance shall be decided by the Council of the League of Nations.

The period of office of the members of the Governing Body will be three years. The method of filling vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

The Governing Body shall, from time to time, elect one of its members to act as its chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least ten members of the Governing Body.

ARTICLE 322.

There shall be a Director of the International Labor Office, who shall be appointed by the Governing Body, and, subject to the instruction of the Gov-

erning Body, shall be responsible for the efficient conduct of the International Labor Office and for such other duties as may be assigned to him.

The Director or his deputy shall attend all meetings of the Governing Body.

ARTICLE 323.

The staff of the International Labor Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the office, select persons of different nationalities. A certain number of these persons shall be women.

ARTICLE 324.

The functions of the International Labor Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labor, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this part of the present treaty in connection with international disputes.

It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

Generally, in addition to the functions set out in this article, it shall have such other powers and duties as may be assigned to it by the Conference.

ARTICLE 325.

The government departments of any of the members which deal with questions of industry and employment may communicate directly with the Director through the representative of their Government on the Governing Body of the International Labor Office, or failing any such representative, through such other qualified official as the Government may nominate for the purpose.

ARTICLE 326.

The International Labor Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given.

ARTICLE 327.

Each of the members will pay the traveling and subsistence expenses of its delegates and their advisers and of its representatives attending the meetings of the Conference or Governing Body, as the case may be.

All the other expenses of the International Labor Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League.

The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this article.

CHAPTER II.—PROCEDURE.

ARTICLE 328.

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the members or by any representative organization recognized for the purpose of Article 317.

ARTICLE 329.

The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the members four months before the meeting of the Conference, and, through them, the non-Government delegates when appointed.

ARTICLE 330.

Any of the Governments of the members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the members of the permanent organization.

Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the delegates present is in favor of considering them.

If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

ARTICLE 331.

The Conference shall regulate its own procedure, shall elect its own president and may appoint committees to consider and report on any matter.

Except as otherwise expressly provided in this part of the present treaty, all matters shall be decided by a simple majority of the votes cast by the delegates present.

The voting is void unless the total number of votes cast is equal to half the number of the delegates attending the Conference.

ARTICLE 332.

The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote.

ARTICLE 333.

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether

these proposals should take the form: (a) of a recommendation to be submitted to the members for consideration with a view to effect being given to it by national legislation or otherwise, or (b) of a draft international convention for ratification by the members.

In either case a majority of two-thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

In framing any recommendation or draft convention of general application, the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization or other special circumstances, make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the members.

Each of the members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

In the case of a recommendation, the members will inform the Secretary-General of the action taken.

In the case of a draft convention, the member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the member.

In the case of a federal State, the power of which to enter into conventions on labor matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this article with respect to recommendations shall apply in such case.

The above article shall be interpreted in accordance with the following principle.

In no case shall any member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned.

ARTICLE 334.

Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the members which ratify it.

ARTICLE 335.

If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the delegates present, it shall nevertheless be within the right of any of the members of the permanent organization to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it.

ARTICLE 336.

Each of the members agrees to make an annual report to the International Labor Office on the measures which it has taken to give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

ARTICLE 337.

In the event of any representation being made to the International Labor Office by an industrial association of employers or of workers that any of the members has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made and may invite that Government to make such statement on the subject as it may think fit.

ARTICLE 338.

If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

ARTICLE 339.

Any of the members shall have the right to file a complaint with the International Labor Office if it is not satisfied that any other member is securing the effective observance of any convention which both have ratified in accordance with the foregoing articles.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Article 337.

If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when they have made such communication, no statement in reply has been received within a reasonable time which

the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Enquiry to consider the complaint and to report thereon.

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

When any matter arising out of Articles 338 or 339 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

ARTICLE 340.

The Commission of Enquiry shall be constituted in accordance with the following provisions:

Each of the members agrees to nominate within six months of the date on which the present treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the members of the Commission of Enquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present article.

Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the president of the Commission. None of these three persons shall be a person nominated to the panel by any member directly concerned in the complaint.

ARTICLE 341.

The members agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 339, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

ARTICLE 342.

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting.

ARTICLE 343.

The Secretary-General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

ARTICLE 344.

In the event of any member failing to take the action required by Article 333, with regard to a recommendation or draft convention, any other member shall be entitled to refer the matter to the Permanent Court of International Justice.

ARTICLE 345.

The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 343 or Article 344 shall be final.

ARTICLE 346.

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government.

ARTICLE 347.

In the event of any member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other member may take against that member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

ARTICLE 348.

The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 340, 341, 342, 343, 345 and 346 shall apply, and if the report of the Commission of Enquiry or the decision of the Permanent Court of International Justice is in favor of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government.

CHAPTER III.—GENERAL.

ARTICLE 349.

The members engage to apply conventions which they have ratified in accordance with the provisions of this part of the present treaty to their colonies, protectorates and possessions which are not fully self-governing:

- (1) Except where owing to the local conditions the convention is inapplicable, or
- (2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

And each of the members shall notify to the International Labor Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

ARTICLE 350.

Amendments to this part of the present treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the members.

ARTICLE 351.

Any question or dispute relating to the interpretation of this part of the present treaty or of any subsequent convention concluded by the members in pursuance of the provisions of this part of the present treaty shall be referred for decision to the Permanent Court of International Justice.

CHAPTER IV.—TRANSITORY PROVISIONS

laid down in the Treaty of Peace concluded with Germany on June 28, 1919.

ARTICLE 352.

The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the annex hereto.

Arrangements for the convening and the organization of the first meeting of the Conference will be made by the Government designated for the purpose in the said annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said annex.

The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of delegates and their advisers, will be borne by the members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 353.

Until the League of Nations has been constituted all communications which under the provisions of the foregoing articles should be addressed to the Secret-

tary-General of the League will be preserved by the Director of the International Labor Office, who will transmit them to the Secretary-General of the League.

ARTICLE 354.

Pending the creation of a Permanent Court of International Justice, disputes which in accordance with this part of the present treaty would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Council of the League of Nations.

ANNEX.

First Meeting of Annual Labor Conference, 1919.

The place of meeting will be Washington.

The Government of the United States of America is requested to convene the Conference.

The International Organizing Committee will consist of seven members, appointed by the United States of America, Great Britain, France, Italy, Japan, Belgium and Switzerland. The Committee may, if it thinks necessary, invite other members to appoint representatives.

Agenda:

- (1) Application of principle of the 8-hours day or of the 48-hours week.
- (2) Question of preventing or providing against unemployment.
- (3) Women's employment:
 - (a) Before and after childbirth, including the question of maternity benefit;
 - (b) During the night;
 - (c) In unhealthy processes.
- (4) Employment of children:
 - (a) Minimum age of employment;
 - (b) During the night;
 - (c) In unhealthy processes.
- (5) Extension and application of the International Conventions adopted at Berne in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches.

SECTION II.—GENERAL PRINCIPLES.

ARTICLE 355.

The High Contracting Parties, recognizing that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section 1 and associated with that of the League of Nations.

They recognize that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labor difficult of immediate attainment. But, holding, as they do, that labor

should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labor conditions which all industrial communities should endeavor to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:

First.—The guiding principle above enunciated that labor should not be regarded merely as a commodity or article of commerce.

Second.—The right of association for all lawful purposes by the employed as well as by the employers.

Third.—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth.—The adoption of an eight-hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

Fifth.—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth.—The abolition of child labor and the imposition of such limitations on the labor of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh.—The principle that men and women should receive equal remuneration for work of equal value.

Eighth.—The standard set by law in each country with respect to the conditions of labor should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth.—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.

PART XIV.—MISCELLANEOUS PROVISIONS.

ARTICLE 356.

Hungary undertakes to recognize and to accept the conventions made or to be made by the Allied and Associated Powers or any of them with any other Power as to the traffic in arms and in spirituous liquors, and also as to the other subjects dealt with in the General Acts of Berlin of February 26, 1885, and of Brussels of July 2, 1890, and the conventions completing or modifying the same.

ARTICLE 357.

The High Contracting Parties declare and place on record that they have taken note of the treaty signed by the Government of the French Republic on

July 17, 1918, with His Serene Highness the Prince of Monaco defining the relations between France and the Principality.

ARTICLE 358.

The High Contracting Parties, while they recognize the guarantees stipulated by the Treaties of 1815, and especially by the Act of November 20, 1815, in favor of Switzerland, the said guarantees constituting international obligations for the maintenance of peace, declare nevertheless that the provisions of these treaties, conventions, declarations and other supplementary acts concerning the neutralized zone of Savoy, as laid down in paragraph 1 of Article 92 of the Final Act of the Congress of Vienna and in paragraph 2 of Article 3 of the Treaty of Paris of November 20, 1815, are no longer consistent with present conditions. For this reason the High Contracting Parties take note of the agreement reached between the French Government and the Swiss Government for the abrogation of the stipulations relating to this zone which are and remain abrogated.

The High Contracting Parties also agree that the stipulations of the Treaties of 1815 and of the other supplementary acts concerning the free zones of Upper Savoy and the Gex district are no longer consistent with present conditions, and that it is for France and Switzerland to come to an agreement together with a view to settling between themselves the status of these territories under such conditions as shall be considered suitable by both countries.

ANNEX.

I.

The Swiss Federal Council has informed the French Government on May 5, 1919, that after examining the provisions of Article 435 of the Peace conditions presented to Germany by the Allied and Associated Powers, in a like spirit of sincere friendship it has happily reached the conclusion that it was possible to acquiesce in it under the following conditions and reservations:

(1) The neutralized zone of Haute-Savoie:

(a) It will be understood that as long as the Federal Chambers have not ratified the agreement come to between the two Governments concerning the abrogation of the stipulations in respect of the neutralized zone of Savoy, nothing will be definitively settled, on one side or the other, in regard to this subject.

(b) The assent given by the Swiss Government to the abrogation of the above-mentioned stipulations presupposes, in conformity with the text adopted, the recognition of the guarantees formulated in favor of Switzerland by the Treaties of 1815 and particularly by the Declaration of November 20, 1815.

(c) The agreement between the Governments of France and Switzerland for the abrogation of the above-mentioned stipulations will only be considered as valid if the Treaty of Peace contains this article in its present wording. In addition, the parties to the Treaty of Peace should endeavor to obtain the assent of the signatory Powers of the Treaties of 1815 and of the Declaration of November 20, 1815, which are not signatories of the present Treaty of Peace.

(2) Free zone of Haute-Savoie and the district of Gex:

(a) The Federal Council makes the most express reservations to the interpretation to be given to the statement mentioned in the last paragraph of the above article for insertion in the Treaty of Peace, which provides that "the stipulations of the Treaties of 1815 and other supplementary acts concerning the free zones of Haute-Savoie and the Gex district are no longer consistent with present conditions." The Federal Council would not wish that its acceptance of the above wording should lead to the conclusion that it would agree to the suppression of a system intended to give neighboring territory the benefit of a special régime which is appropriate to the geographical and economical situation and which has been well tested.

In the opinion of the Federal Council the question is not the modification of the customs system of the zones as set up by the treaties mentioned above, but only the regulation in a manner more appropriate to the economic conditions of the present day of the terms of the exchange of goods between the regions in question. The Federal Council has been led to make the preceding observations by the perusal of the draft convention concerning the future constitution of the zones which was annexed to the note of April 26 from the French Government. While making the above reservations, the Federal Council declares its readiness to examine in the most friendly spirit any proposals which the French Government may deem it convenient to make on the subject.

(b) It is conceded that the stipulations of the Treaties of 1815 and other supplementary acts relative to the free zones will remain in force until a new arrangement is come to between France and Switzerland to regulate matters in this territory.

II.

The French Government have addressed to the Swiss Government, on May 18, 1919, the following note in reply to the communication set out in the preceding paragraph:

In a note dated May 5 the Swiss Legation in Paris was good enough to inform the Government of the French Republic that the Federal Government adhered to the proposed article to be inserted in the Treaty of Peace between the Allied and Associated Governments and Germany.

The French Government have taken note with much pleasure of the agreement thus reached, and, at their request, the proposed article, which had been accepted by the Allied and Associated Governments, has been inserted under No. 435 in the Peace Conditions presented to the German Plenipotentiaries.

The Swiss Government, in their note of May 5 on this subject, have expressed various views and reservations.

Concerning the observations relating to the free zones of Haute-Savoie and the Gex district, the French Government have the honor to observe that the provisions of the last paragraph of Article 435 are so clear that their purport cannot be misapprehended, especially where it implies that no other Power but France and Switzerland will in future be interested in that question.

The French Government, on their part, are anxious to protect the interest

of the French territories concerned, and, with that object, having their special situation in view, they bear in mind the desirability of assuring them a suitable customs régime and determining, in a manner better suited to present conditions, the methods of exchanges between these territories and the adjacent Swiss territories, while taking into account the reciprocal interest of both regions.

It is understood that this must in no way prejudice the right of France to adjust her customs line in this region in conformity with her political frontier, as is done on the other portions of her territorial boundaries, and as was done by Switzerland long ago on her own boundaries in this region.

The French Government are pleased to note on this subject in what a friendly disposition the Swiss Government take this opportunity of declaring their willingness to consider any French proposal dealing with the system to be substituted for the present régime of the said free zones, which the French Government intend to formulate in the same friendly spirit.

Moreover, the French Government have no doubt that the provisional maintenance of the régime of 1815 as to the free zones referred to in the above-mentioned paragraph of the note from the Swiss Legation of May 5, whose object is to provide for the passage from the present régime to the conventional régime, will cause no delay whatsoever in the establishment of the new situation which has been found necessary by the two Governments. This remark applies also to the ratification by the Federal Chambers, dealt with in paragraph 1 (*a*) of the Swiss note of May 5, under the heading "Neutralized zone of Haute-Savoie."

ARTICLE 359.

The Allied and Associated Powers agree that where Christian religious missions were being maintained by Hungarian societies or persons in territory belonging to them, or of which the government is entrusted to them in accordance with the present treaty, the property which these missions or missionary societies possessed, including that of trading societies whose profits were devoted to the support of missions, shall continue to be devoted to missionary purposes. In order to ensure the due execution of this undertaking, the Allied and Associated Governments will hand over such property to boards of trustees appointed by or approved by the Governments and composed of persons holding the faith of the mission whose property is involved.

The Allied and Associated Governments, while continuing to maintain full control as to the individuals by whom the missions are conducted, will safeguard the interests of such missions.

Hungary, taking note of the above undertaking, agrees to accept all arrangements made or to be made by the Allied or Associated Government concerned for carrying on the work of the said missions or trading societies and waives all claims on their behalf.

ARTICLE 360.

Without prejudice to the provisions of the present treaty, Hungary undertakes not to put forward directly or indirectly against any Allied or Associated

Power, signatory of the present treaty, any pecuniary claim based on events which occurred at any time before the coming into force of the present treaty.

The present stipulation will bar completely and finally all claims of this nature, which will be thenceforward extinguished, whoever may be the parties in interest.

ARTICLE 361.

Hungary accepts and recognizes as valid and binding all decrees and orders concerning Austro-Hungarian ships and Hungarian goods and all orders relating to the payment of costs made by any prize court of any of the Allied or Associated Powers, and undertakes not to put forward any claim arising out of such decrees or orders on behalf of any Hungarian national.

The Allied and Associated Powers reserve the right to examine in such manner as they may determine all decisions and orders of Austro-Hungarian prize courts, whether affecting the property rights of nationals of those Powers or of neutral Powers. Hungary agrees to furnish copies of all the documents constituting the record of the cases, including the decisions and orders made, and to accept and give effect to the recommendations made after such examination of the cases.

ARTICLE 362.

The High Contracting Parties agree that, in the absence of a subsequent agreement to the contrary, the chairman of any commission established by the present treaty shall in the event of an equality of votes be entitled to a second vote.

ARTICLE 363.

Except where otherwise provided in the present treaty, in all cases where the treaty provides for the settlement of a question affecting particularly certain States by means of a special convention to be concluded between the States concerned, it is understood by the High Contracting Parties that difficulties arising in this connection shall, until Hungary is admitted to membership of the League of Nations, be settled by the Principal Allied and Associated Powers.

ARTICLE 364.

In the present treaty the expression "former Kingdom of Hungary" includes Bosnia and Herzegovina except where the text implies the contrary. This provision shall not prejudice the rights and obligations of Austria in such territory.

The present treaty, in French, in English, and in Italian, shall be ratified. In case of divergence, the French text shall prevail, except in Parts I (Covenant of the League of Nations) and XIII (Labor), where the French and English texts shall be of equal force.

The deposit of ratifications shall be made at Paris as soon as possible.

Powers of which the seat of the Government is outside Europe will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris that their ratification has been given; in that case they must transmit the instrument of ratification as soon as possible.

A first procès-verbal of the deposit of ratifications will be drawn up as soon as the treaty has been ratified by Hungary on the one hand, and by three of the Principal Allied and Associated Powers on the other hand.

From the date of this first procès-verbal the treaty will come into force between the High Contracting Parties who have ratified it. For the determination of all periods of time provided for in the present treaty, this date will be the date of the coming into force of the treaty.

In all other respects the treaty will enter into force for each Power at the date of the deposit of its ratification.

The French Government will transmit to all the signatory Powers a certified copy of the procès-verbaux of the deposit of ratifications.

In faith whereof the above-named plenipotentiaries have signed the present treaty.

Done at Trianon, the fourth day of June, one thousand nine hundred and twenty, in a single copy which will remain deposited in the archives of the French Republic, and of which authenticated copies will be transmitted to each of the Signatory Powers.

HUGH C. WALLACE.

DERBY.

GEORGE H. PERLEY.

ANDREW FISHER.

THOMAS MACKENZIE.

R. A. BLANKENBERG.

DERBY

A. MILLERAND.

F. FRANÇOIS-MARSAL.

AUG. ISAAC.

JULES CAMBON.

PALÉOLOGUE.

BONIN.

M. GRASSI.

K. MATSUI.

J. VAN DEN HEUVEL.

ROLIN-JAEQUEMYS.

VIKYUIN WELLINGTON KOO.

RAFAEL MARTINEZ ORTIZ.

A. ROMANOS.

CARLOS A. VILLANUEVA.

R. A. AMADOR.

E. SAPIEHA.

ERASME PILTZ.

AFFONSO COSTA.

JOÃO CHAGAS.

DR. J. CANTACUZÈNE.

N. TITULESCU.

NIK. P. PACHITCH.

DR. ANTE TRUMBIČ.

DR. IVAN ZOLGER.

CHAROON.

DR. EDWARD BENES.

STEFAN OSUSKY.

A. BÉNAUD.

DRASCHE LÁZÁR.

PROTOCOL.

With a view to indicating precisely the conditions in which certain provisions of the treaty of even date are to be carried out, it is agreed by the High Contracting Parties that:

1. The list of persons to be handed over to the Allied and Associated Governments by Hungary, under the second paragraph of Article 157, shall be communicated to the Hungarian Government within a month from the coming into force of the treaty;

2. The Reparation Commission referred to in Article 170 and paragraphs 2, 3 and 4 of Annex IV, and the special section provided for in Article 163, cannot require trade secrets or other confidential information to be divulged;

3. From the signature of the treaty, and within the ensuing four months, Hungary will be entitled to submit for examination by the Allied and Associated Powers documents and proposals in order to expedite the work connected with reparation, and thus to shorten the investigation and to accelerate the decisions.

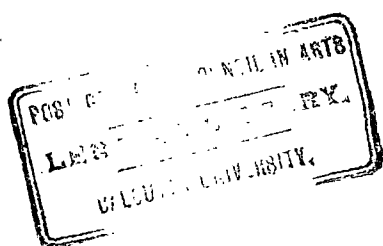
4. Proceedings will be taken against persons who have committed punishable offences in the liquidation of Hungarian property, and the Allied and Associated Powers will welcome any information or evidence which the Hungarian Government can furnish on this subject.

Done in French, in English, and in Italian, of which the French text shall prevail in case of divergence, at Trianon, the fourth day of June, one thousand nine hundred and twenty.

DECLARATION.

With a view to minimizing the losses arising from the sinking of ships and cargoes in the course of the war, and to facilitating the recovery of ships and cargoes which can be salvaged and the adjustment of the private claims arising with regard thereto, the Hungarian Government undertakes to supply all the information in its power which may be of assistance to the Governments of the Allied and Associated Powers, or to their nationals, with regard to vessels sunk or damaged by the Hungarian naval forces during the period of hostilities.

This declaration made in French, in English, and in Italian, of which the French text shall prevail in case of divergence, at Trianon, the fourth day of June, one thousand nine hundred and twenty.



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THE ADMINISTRATION OF JUSTICE IN THE SWISS FEDERAL COURT IN INTERCANTONAL DISPUTES *

BY DR. DIETRICH SCHINDLER, OF ZURICH

I. THE JURISDICTION OVER INTERCANTONAL CONFLICTS

1. HISTORICAL DEVELOPMENT (1291-1848)

It is inherent in the nature of a closer relation of states that an organ be created for the decision of disputes between the individual members of a confederation. The Swiss Confederation has at all times applied itself to this task.¹

The oldest league of the three original cantons, Uri, Schwyz and Unterwalden, of 1291, which forms the origin of the Confederation, provided the following procedure for the settlement of disputes:

If dissension shall arise between any of the confederates, prudent men of the Confederation shall come together to settle the dispute between the parties as shall seem right to them, and the party which rejects their judgment shall be an enemy to the other confederates. If war or discord shall arise among any of the confederates, and one contending party refuses to accept proffered justice or satisfaction, the confederates are bound to assist the other party.²

If this provision still left the settlement of disputes to the initiative of well-disposed men, the league made with Zurich in 1351, as well as the later leagues, provided a real arbitral procedure. This was the form of decision of intercantonal disputes which was suited to the earlier political conditions of the Confederation. Until the year 1848 (with the exception of the years 1798-1815) such conflicts were actually settled by arbitral courts. But just as the old Confederation (as it existed until 1798)—in contradistinction to modern confederations of states and federal states—was not a state united by a uniform constitution, but a conglomeration of different leagues among the individual cantons (called also Orte and Stände), so, too, a uniform regulation of the system of arbitral courts was lacking. Each of the leagues determined in its own manner, which often differed from that of the others, the regulation of the arbitral procedure for disputes between the members

* Translated from the German by E. H. Zeydel, Washington, D. C.

¹ On the historical development of intercantonal law in general, cf. Max Huber, this JOURNAL, January, 1909, p. 67.

² English translation of I. M. Vincent, Government in Switzerland, New York, 1900.

of the league. The provisions referred to the appointment of the arbitral court and the place of meeting; there were but few regulations as to procedure and the nature of the law to be applied. This organization for the administration of law between the cantons was designated as "confederate law" (Eidenössisches Recht). In time the regulation provided in the Zurich League of 1351 became prevalent for the appointment of arbitral courts; each of the litigant parties named two arbitral judges who, if they could not agree, chose an umpire from among the Confederation.

During the years 1798-1803, Switzerland constituted under the supremacy of France a unified State, the cantons were degraded to mere provinces, and intercantonal relations ceased to exist.

By virtue of the Mediation Constitution of 1803, granted by Napoleon, the cantons again received the character of states and were united into a sort of federal state. The supreme organ of this state was the Diet, composed of deputies from the cantons. If an attempt at mediation failed, the settlement of intercantonal conflicts devolved upon the Diet, which constituted itself for this purpose into a "syndicate." While the deputies of the Diet were bound by the instructions of their cantonal governments when the Diet met as a political body, and the representatives of the larger cantons had two votes to one vote for those of the smaller cantons, the deputies were bound by no instructions in the decisions of the "syndicate" and none possessed more than one vote. When the Diet did not meet, it was the duty of the *Landammann* of Switzerland to appoint arbitral judges for purposes of mediation, or to postpone the discussion until the next Diet.

After the fall of Napoleon, the Mediation Constitution was set aside and the cantons united in 1815 to form a confederation of states. In the reorganization, the conditions as they had existed prior to 1798 were used as a model for the decision of intercantonal conflicts, as well as for many other matters. The decision was again entrusted to arbitral courts, the appointment of which was now, however, regulated by the Federal Treaty, which embraced all the cantons in an equal manner. The provision regulating this matter may be looked upon as a summary conclusion of Swiss experience in intercantonal courts of arbitration, and reads as follows:

§ V. "All claims and disputes between the cantons on matters which are not guaranteed by the Federal Treaty are referred to the confederate law. The course and form of this procedure are fixed as follows:

Each of the two litigant cantons chooses from among the magistrates of other cantons two, or if the cantons so agree, one arbitral judge.

If the litigation is between more than two cantons, the designated number is chosen by each party.

These arbitral judges together endeavor to settle the dispute amicably and by means of mediation.

If this cannot be attained, the arbitral judges choose an umpire from among the magistrates of a canton which is not a party to the dispute and from which no arbitral judge has as yet been drawn.

If the arbitral judges should be unable to come to an agreement as to the choice of the umpire, and one of the cantons should make a complaint thereon, the umpire is appointed by the Diet, in which case, however, the litigant cantons have no vote. The umpire and the arbitral judge again attempt to settle the dispute by mediation, or to decide, in case of mutual consent, by means of a compromise verdict; but if none of these possibilities occurs, they render a decision finally in accordance with law.

The verdict cannot be further contested and is, if necessary, carried into execution by a decree of the Diet.

Simultaneously with the principal issue, a decision shall be rendered with regard to the costs, consisting of the expenses of the arbitral judges and the umpire.

The arbitral judges and umpires chosen in accordance with the aforementioned provisions are exempted by their governments from the oath to their canton in the pending litigation.

In all disputes which may occur, the cantons involved shall refrain from all measures of violence or even of arming, shall follow exactly the path of law laid down in this article, and shall conform to the verdict in all its parts.

2. THE EXISTING LAW

In the year 1848 the Swiss Federal State was founded. As organs of the new state the Federal Assembly (the legislative body), the Federal Council (the executive body) and the Federal Court were created by the Federal Constitution of September 12, 1848. The system of arbitral courts, which was recognized to be insufficient, was abandoned and the settlement of disputes between cantons was entrusted to the new federal organs. The Federal Court, which from 1848 to 1874 was not a permanent court, but met only occasionally, was entrusted with disputes in civil law, while the Federal Council, from the decisions of which appeal could be had to the Federal Assembly, was entrusted with disputes in public law.

This division of jurisdiction, which entrusted to the Federal Court only insignificant tasks, was discontinued in the complete revision of the Federal Constitution in 1874. The new Constitution of May 29, 1874, which is still in force, created a permanent Federal Court and entrusted to it the settlement of disputes between the cantons not only in civil, but also in public law. The Federal Council retained jurisdiction only in some cases of an administrative nature.

The separate provisions of the Federal Constitution and of legislation are as follows:

The competency of the Confederation follows from Article 5 of the Federal Constitution, which reads:

The Confederation guarantees to the cantons their territory, their sovereignty, within the limits of Article 3,³ their constitutions, freedom, the

³ Article 3 reads: "The cantons are sovereign, in so far as their sovereignty is not limited by the Federal Constitution, and as such they exercise all rights which are not entrusted to the Federal authority."

rights of the people and the constitutional rights of the citizens, as well as the rights and powers which the people have entrusted to the authorities.

The guarantee of the Confederation is effected among other means by the fact that it furnishes an organ through which conflicts between the cantons can be decided. The Federal Constitution of 1848 stipulated the following provisions in this matter:

Article 90. The Federal Council has particularly the following powers and obligations within the limits of the present constitution: No. 2. It must watch over the observance of the Constitution, of the laws and of the decrees of the Confederation, as well as of the regulations of confederate concordats; it issues the necessary decrees for their administration, either of its own accord or in response to a complaint that has been made.

Appeals from the decisions of the Federal Council could be made to the Federal Assembly in compliance with the following regulation:

Article 74. The subjects which fall within the jurisdiction of both Councils are especially the following: . . . No. 15. Complaints by cantons or citizens regarding decrees of the Federal Council: No. 16. Disputes among the cantons falling under the head of public law.

Finally the Federal Court had jurisdiction in accordance with Article 101 of the Federal Constitution, the conclusive provisions of which read:

Article 101. The Federal Court decides as a civil court: (1) in disputes which do not fall under the head of public laws, (a) between cantons among themselves.

The respective provisions of the Federal Constitution of 1874, which is today still in force, read:

Article 110. The Federal Court decides disputes in civil law: . . . 3, between the cantons among themselves.

The Federal Court further decides in cases concerning homelessness, as well as in disputes between communes of different cantons pertaining to the rights of citizens.

Article 113. The Federal Court further decides:

- (2.) In disputes between cantons pertaining to matters of public law;
- (3.) In complaints concerning the violation of constitutional rights of citizens as well as in any complaints of private persons concerning the violation of concordats and state treaties. [According to the Law of Execution, such a complaint can be directed only against cantonal ordinances and decrees.]

The provision of No. 2 of Article 113 was elaborated by Article 177 of the Federal Law of March 22, 1893, concerning the organization of the administration of the Federal Laws ("Law of Organization"). This article reads:

The jurisdiction of the Federal Court over disputes in public law between cantons is well founded if a cantonal government applies for its

decision. To such disputes there belong especially boundary disputes between cantons, questions of competency between the authorities of different cantons, and cases relative to the application of intercantonal treaties, as far as the infringement of the interests or the legal claims of private persons are not exclusively involved.

The Federal Constitution distinguishes in the aforementioned articles between disputes in civil law and disputes in public law between cantons. A case is civil or public, depending upon whether the cantons appear in court as private juridical persons or as representatives of public interests. Since the Federal Court is competent in both cases, it is not necessary to dwell further upon this distinction at the present time.

In spite of the provisions of the Federal Constitution which have been mentioned, the Federal Council, in accordance with special regulations provided by some of the federal laws, has even today the duty of deciding certain intercantonal disputes. This is the case, however, only in such matters as are entirely regulated by federal legislation and in which, consequently, the intercantonal sovereignty is not in question, or in which the decision must be made rather in accordance with technical than legal points of view. In the latter case, as far as juridical questions are decided also by the Federal Council, the decision of the latter may possibly be appealed from before the Federal Court (R. O. 33, I, pp. 336-7; law relative to the Hydraulic Police in the Alps, Article 12).

However, the cantons are not forbidden to submit their disputes to an arbitral court. In Article 102, No. 5, of the Federal Constitution, it is provided that the Federal Council must execute such awards (*cf.* Ullmer, II, No. 859). Furthermore, it is possible that a commission formed from the very outset may be competent for the decision of certain intercantonal disputes. Compare an example *infra*, p. 175.

Finally, a Federal Assembly may have an important rôle in the settlement of intercantonal conflicts. If it is a question of a conflict of interests the decision of which is not possible according to the norms of law, or where such a decision would lead to an unfair solution, the Federal Assembly, as the highest political instance, may intervene.⁴

In the following pages decisions of the Federal Court (and of the Federal Council and the Federal Assembly before 1874, respectively) in intercantonal conflicts will be presented. Disputes will be treated in which two cantons as such appear as parties to a litigation. The Federal Court (before 1874, the Federal Council and the Federal Assembly, respectively) must, to be sure, also decide complaints of citizens relating to the violation of constitutional rights, as well as complaints of private persons in matters of violation of concordats and state treaties, in so far as the complaints are directed against intercantonal ordinances ("recourse in public law").

In such decisions, questions of intercantonal law are often decided. The

⁴ *Cf.* Max Huber, in this JOURNAL, Jan., 1909, p. 90.

Federal Court may see fit to treat the same juridical question now as a dispute in public law between cantons, now as a recourse in public law, nay, in one and the same case the court often assumes jurisdiction from both points of view. Nevertheless, decisions on recourses in public law are included in the following pages only in so far as decisions have been rendered in cases between cantons with regard to the same juridical questions, and the inclusion of such decisions seemed, consequently, to be necessary in order to render complete the account of the judicature of the Federal Court in certain matters. The rest of the decisions on recourses in public law, in which questions of intercantonal law are decided, are omitted from these pages because in these cases it is usually a question of the interpretation of special positive norms of federal law which are hardly of interest for international law. On the other hand, the disputes in which the cantons themselves appeared as parties—in default of positive norms of law—were in most cases decided in accordance with general principles of international law and of federal law. The decisions in such conflicts might, therefore, be of value as precedents for international litigation.⁵

II. PROCEDURE IN THE TRIALS OF INTERCANTONAL DISPUTES

The Federal Court has in practice applied certain rules of procedure in the cases brought before it, which will be treated first in the following pages.

1. SUABILITY OF PLAINTIFF AND DEFENDANT

The parties to intercantonal disputes are, in the first place, cantons. They are represented by their governments. But the communes may also appear as parties, represented either by the cantonal government, side by side with the latter, or for themselves alone.

After the Federal Court in the year 1878 failed to consider a dispute between communes of different cantons relative to a joint charitable duty, as a dispute between cantons, and hence declared itself to be incompetent

⁵ Naturally, the whole body of intercantonal law will not be presented in the following pages, but rather only those not very numerous matters in which decisions have been rendered by the Federal Court. Systematic presentations of the entire intercantonal law are: Max Huber, "The Intercantonal Law of Switzerland (Swiss Interstate Law)," in this JOURNAL, Jan., 1909; Arnold Bolle, *Das interkantonale Recht*, La Chaux-de-Fonds, 1907. Cf. also W. Burekhardt, *Kommentar der Schweizerischen Bundesverfassung*, Berne, 1914, and T. Schollenberger, *Bundesverfassung der Schweizerischen Eidgenossenschaft, Kommentar mit Einleitung*, Berlin, 1905. The sources for the following presentation are: *Recueil officiel des Arrêts du Tribunal fédéral suisse* (cited as R. O.) appearing since 1875, one volume annually, since 1894 (24th volume) in two parts, since 1914 (40th volume) in three parts, of which the first contains in each case the decisions in public law; R. E. Ullmer, *Die staatsrechtliche Praxis der Schweizerischen Bundesbehörden*, Vol. I, 1843-1860, Vol. II, 1848-1863 (cited Ullmer); L. R. von Salis, *Schweizerisches Bundesrecht, Staatsrechtliche und verwaltungsrechtliche Praxis des Bundesrates und der Bundesversammlung seit 1874*, 2d ed., Berne, 1904.

(R. O., ϵ , p. 365), it subsequently abandoned this point of view and always admitted such disputes. "For a conflict of competency which exists materially between communal authorities of different cantons, must be settled by a delimitation of the cantonal sovereignties involved," wherefore the Federal Court is competent, in accordance with Article 175, line 2, of the Law of Organization (R. O. 39, I, p. 606). But it follows from this that such conflicts may "be submitted to the Federal Court, by one of the cantonal governments involved, as a dispute in public law" (R. O. 17, p. 20-1). The Federal Court has in constant practice maintained the principle that in disputes between communes of different cantons "the governments are authorized and obliged to represent the communes" (R. O. 8, p. 442; 9, p. 260; 10, p. 96; 13, p. 330/415; 21, p. 315/6; 23, p. 1467; 24, II, p. 253). However, it is not impossible for the communes to appeal directly to the Federal Court without the intervention of the cantonal governments (as, for instance, in a dispute relative to citizens' rights (R. O. 24, II, p. 246).

Yet the cantonal governments must represent not only the communes, but they also have the right "to answer for the competency of their courts and to bring the dispute as to the subjection of a case before the Federal authorities as a conflict in public law" (R. O. 12, p. 68).

Finally, the Federal Court has quite generally declared "that the representation of sovereign rights of a canton in its relations with another canton devolves upon the government and that, on the other hand, the latter must answer for the fulfilment of the political duties of the canton in its exterior relations." Thus, the suability of plaintiff and defendant, respectively, was acknowledged in the governments of two cantons in a dispute concerning the endangerment of cantonal territory through target practice in a neighboring canton (R. O. 26, I, p. 449).

A canton is also competent to represent the private interests of its citizens if it alleges incidentally an interest of its own. In the decision of January 12, 1878, in the case of *Aargau v. Zurich*, the Federal Court declared:

The right of the Canton of Aargau to make complaint in the present case might be doubted only in so far as the exclusively private interests of Aargovian citizens are at stake. But this is in no respect the case. Besides the private interests . . . there is indisputably a public interest of the canton of Aargau in question, and under these conditions the government has the right to protect its nationals against prejudice on the part of another canton (R. O. 4, p. 42; also 14, p. 37; 26, I, p. 451).

A canton may also join in the complaint of one of its citizens (R. O. 8, p. 727).

It was mentioned above that private persons may complain to the Federal authorities against the violation of constitutional rights through cantonal ordinances. The question then arises whether the Federal authori-

ties should also receive complaints of private persons who allege that their rights have been injured by the encroachment of one canton upon the sovereign rights of another canton. In two cases which however stand alone, the Federal Court has answered the question negatively (R. O. 4, p. 4; 5, p. 7). For the rest, the Federal authorities have always accepted such complaints. The beginning was made by a decision of the Federal Assembly of June 25, 1862, according to which the complaint of a citizen against simultaneous taxation by two cantons was approved. The Commission of the National Council held:

It is not apparent why the request of the citizen who is injured because of the conflict between the cantons should not be heard in the same way as when the cantons appeal to the Confederation for a decision. If each canton can by means of execution assert its opinion, none of them has, to be sure, any reason for appealing to the assistance of the Confederation; but the conflict is existent none the less, only that a third party is affected by the consequences. Now if the two states were unconditionally sovereign, and if they were not related to each other in a way which makes possible the adjustment of the disparity, the person affected thereby would submit to the force of circumstances because there would be no authority which could protect him against the injustice. But by virtue of the fact that the cantons have united in a joint state, they assumed the obligation of not transgressing upon the territory of another canton in the exercise of their cantonal rights; and if this should occur, nevertheless, it is the duty of the authorities to investigate and to decide with which side justice lies, and the cantons must submit to the decision pronounced in accordance with the Federal law. Such a case is presented when the legislation of two cantons on the subject of taxation conflicts in such a manner that both cantons claim the right of taxing the same object. The authorities must decide which claims are to be protected by the Confederation (Ullmer, II, No. 694).

The practice in matters of double taxation begun by this decision has been followed in other disputes of intercantonial juridical relations. The Federal Court has constantly received such complaints of private persons (R. O. 8, p. 728; 18, p. 700; 24, I, p. 227; 29, I, p. 418; 32, I, p. 626; 33, I, p. 363), often with express reference to the practice in cases of double taxation. In the two last cited decisions, the Federal Court derives from Article 5 of the Federal Constitution "the general authority to decide for the Confederation on conflicts of cantonal sovereignties."

In disputes in the matter of public law between cantons, the Federal Court has declared admissible the intervention of third persons who have a legal interest in the outcome of a litigation, as, for example, a commune (R. O. 8, p. 52).

2. PREMISES OF A DISPUTE BETWEEN CANTONS

The question as to when a dispute is civil and when it is public does not need to be further discussed here, since the Federal Court has jurisdiction in both cases; but it is of interest to know at what stage an intercantonial

conflict may be brought before the Federal Court. On this subject, the decision of October 21, 1909, in the case of *Schwyz v. Zurich* is as follows:

It is clear that a dispute in public law between cantons exists only after one of the two cantons has decided unfavorably a definite request of the other canton. It is not the duty of the Federal Court to decide juridical questions concerning which there is possibly no difference of opinion at all between the cantons in question, nor may a cantonal government be denied the right to express its opinion with regard to a definite request of the government of another canton in the first place in its administrative capacity and later, eventually, in its capacity as a part (R. O. 35, I, p. 664/5).

In one particular case, however, the Federal Court admitted a suit before an actual conflict of cantonal sovereignties had occurred. The canton of Aargau had been prohibited by decision of the Federal Court of November 1, 1900, from permitting the further use of a rifle range in the manner theretofore used because it endangered the territory of Solothurn. The city of Aargau, as the proprietor of the rifle range, caused a project to be made for the improvement of the said range and submitted it through the medium of the cantonal government for the approval of the government of the Canton of Solothurn. The latter refused, however, to enter into a discussion of the subject. The Federal Court admitted the suit of the Canton of Aargau requesting that the maintenance of the rifle range be declared permissible in view of the projected plan.

The Canton of Aargau had to enforce this claim with respect to the Canton of Solothurn, which had obtained the injunction in question. . . . The requisite interest of the plaintiff in this verification arises from the fact that the city of Aargau can not reasonably be expected to make the projected improvements in connection with the shooting range, which will entail great expenses, before the question of the admissibility of its use has been decided, since the decision upon this subject may, according to the opinion of the experts, be made by means of the plans that have been submitted (R. O. 41, I, pp. 135, 136).

At all events, the Federal Court determines only such points in a case in which there is an existing legal interest. Thus, in the decision of December 11, 1914, in the case of *Neuchâtel v. Berne*, the examination of an inter-cantonal agreement was completely refused "since the validity thereof has been contested by no one and the request for verification therefore lacks the necessary requisite of a suit, the existence of a present juridical interest in the verification requested" (R. O. 40, I, p. 555; 33, I, p. 337).

The Federal Court is competent even if a decree of a supreme body of the defendant canton has not been issued (R. O. 23, p. 1461) for extra-cantonal authorities can not be expected to exhaust all the cantonal instances in a dispute in matters of public law (R. O. 39, I, p. 607).

Concerning the premise which must be fulfilled when a private person

makes complaint, in the aforementioned sense, the Federal authorities have spoken as follows: In the year 1850 the Federal Council decided that it does not devolve upon it "to refer" private persons who are uncertain as to the court which has jurisdiction of a given case "to a certain court from the very beginning"; it must rather be left to the parties "to assert their rights before the court which they consider as competent" (Ullmer, I, No. 245). By the practice in matters of double taxation, it was determined by the Federal Court that a complaint with regard to double taxation is admissible not only in the event of an actual conflict of the revenue authorities of two cantons, but also in the event of a potential conflict of such a nature; that is, it is sufficient if a canton interferes unjustifiably with the sovereign right of taxation of another canton; it is not necessary that the canton which is justified in imposing the taxation actually makes use of its right. (The last decisions are found in R. O. 37, I, p. 264; 38, I, p. 482; 41, I, p. 70). With express reference to this practice, the Federal Court has declared that in intercantonal disputes as to the right to appeal to a court, the mere presence of a potential conflict is sufficient for entering complaint (R. O. 44, I, p. 47). This principle was also declared applicable to disputes relative to the extent of cantonal penal sovereignty (R. O. 41, p. 199).

In matters of violation of intercantonal law a private person may make complaint before the Federal Court without having exhausted the cantonal legal remedies (R. O. 44, I, p. 47).

3. WEIGHT OF THE CONTENTIONS OF THE PARTIES

With regard to its attitude toward the contentions of the parties in disputes on intercantonal law, the Federal Court has spoken as follows: "With respect to the juridical consideration of complaints that have been entered, the Court is not bound by the propositions of law or statement of claims of the parties, but it must rather apply the law actually applicable to the case" (R. O. 6, p. 209).

4. LEGAL FORCE OF THE DECISIONS

The question of the legal force of the findings of the Federal authorities in intercantonal disputes was raised in the consideration of the decision of February 17, 1882, in the case of *Luzerne v. Aargau*. Although the question was left open by the court, it stated:

Although, of course, it follows from the general conception of the administration of justice as a means of settling juridical relations, in a legally binding and authoritative way that such decisions of the political Federal authorities [a decision of the Federal Council of 1870 was in question], so long as they have not been rescinded, are in every case binding and enforceable, it is nevertheless not at all certain that such decisions have the same binding effect upon the deciding authorities themselves as judicial decision . . . (R. O. 8, p. 53).

In a number of cases arising out of double taxation the Federal Court has denied the legal force of such decisions:

The principles of civil procedure upon the matter adjudged are not applicable with regard to public and constitutional law, in which the contest, far from being limited to a private question between well-determined parties, may interest the entire population and be revived upon occasion by an act one kind or another of the legislative or administrative authorities. Consequently, the decree of March 5, 1866 [which had been issued in the same matter], while remaining obligatory upon the parties between whom it was originally pronounced, could not deprive this tribunal of its competency to examine anew the constitutional question decided by that decree (R. O. 10, p. 178).

This point of view was later confirmed by the Federal Court (R. O. 12, p. 561). Since in the absence of a federal law the prohibition of double taxation (Federal Constitution, Article 46) is accomplished through the decisions of the Federal Court, the question of the legal force of such decisions is of especial importance. It is necessary for the Federal Court as well as for the legislator to meet the needs of the time. Earlier decisions

are not opposed to a reconsideration of the question of double taxation which have once been settled, in so far as those decisions no longer comply with the present-day application of the . . . prohibition of intercantonal double taxation. For the public legal duty of tax-paying is determined as such generally by the laws that are from time to time in force, and, therefore, changes—especially concerning the definition of conflicting cantonal rights to collect revenues under the federal prohibition against double taxation—with the respective administrations of justice on the part of the Federal Court, which acts in the absence of federal legislation in this field. Consequently, the cantons are, on the one hand, obliged, and, on the other hand, entitled to adapt their revenue claims, in accordance with their regulations for the assessment of taxes, to the practice of the Federal Court as it prevails from time to time, and a decision of the Federal Court remains effective within the taxation periods of cantonal law, only so long as the legal conception upon which it is based obtains (R. O. 41, I, p. 432).

III. INTERCANTONAL LAW IN THE DECISIONS OF THE FEDERAL COURT

1. THE RULES OF LAW APPLIED

The rules of law for the decision of disputes between cantons are found in the first place in the Federal Constitution and in Federal legislation. But fixed rules cannot always be derived from these sources. However, the Federal Court is bound to decide every cantonal dispute submitted to it. If, therefore, the positive Federal law furnishes no solution, it must be sought upon the basis of the principles on which Federal law is constructed. In a dispute between the Cantons Aargau and Zurich on the subject of water rights, the Federal Court rejected the defendant's claim that a legal principle can not be found for the decision.

The legal principle which must form a starting-point in a decision of such disputes is that of the equality of the cantons, by virtue of which no canton may exercise its sovereign rights in such a way that the exercise will directly or indirectly affect the sovereign rights of another canton, with the result that the latter rights can not coëxist beside the former (R. O. 4, p. 46).

Finally, in case a solution can not be found in the Federal law, international law is applied. Thus, in the case of *Solothurn v. Aargau*, decided November 1, 1900, the Federal Court held that for the determination of the rights of territorial sovereignty of the cantons and in general for the regulation of the mutual rights and duties of the cantons, "the principles of international law in general," must be resorted to, "whereby, further, the confederate relations of the cantons may not be disregarded" (R. O. 26, I, p. 450).

But there are intercantonal conflicts for which international law, too, furnishes no satisfactory solution. If, in disputes in matters of private law, a solution can not be found in positive law, Article 2 of the Swiss Code of Civil Law prescribes that the judge shall "decide according to the rule which he would establish if he were a legislator." In the decision of disputes in public law between cantons, the Federal Court does not follow this principle. It has in several cases rather allowed the conflict of cantonal sovereignties to continue on the ground that cantonal sovereignty is unlimited in this respect, or that no rules in Federal law exist which permit of an equitable solution. Thus, the Federal Court rejected a claim of Zurich against Berne for payment of a contribution toward the support of a joint citizen, for the following reasons:

Since a rule of Federal law, upon which the claim of Zurich could be based, does not exist, the complaint must be rejected, for it is clear that the Federal Court can decide disputes in public law between cantons only in accordance with positive law, and not in accordance with considerations of equity or utility, such as Zurich has in the main brought forth (R. O. 29, I, p. 450). Compare further, R. O. 5, p. 426; 7, p. 468; 24, I, p. 227.

On the settlement of intercantonal conflicts according to the law of concordats (intercantonal right of concluding treaties) compare *infra*, p. 165.

2. THE CAPACITY OF THE CANTONS TO ACT

A. *Prohibition of self-help*

Article 14 of the Federal Constitution provides:

If disputes arise among the cantons, they are bound to refrain from all self-help, as well as from any form of armament, and to submit to the decision of the Confederation.

For the violation of this article, which was contained in the same form in the Federal Constitution of 1848, the canton or private person may make

complaint before the Federal authorities. The Federal Council has decided a number of such complaints.

A citizen of Solothurn was condemned by a court of Baselland to pay a sum of money. The authorities of Solothurn refused to execute the decision, whereupon the court of Baselland authorized the seizure of any holdings of the citizen of Solothurn in Baselland. The complaint entered against this proceeding by the Government of Solothurn was approved by the Federal Council, because the Federal authorities should have been appealed to when Solothurn refused to execute the decision (Ullmer, I, No. 44).

Similarly there was declared invalid the seizure, decreed by a court of Berne, of property of a citizen of Zurich because Zurich had refused to execute the decision rendered in Berne against this citizen. The Canton of Berne should have entered complaint with the Federal Council because of the refusal of Zurich (Ullmer, II, No. 730).

The decision of a cantonal court against another canton was annulled by the Federal Council because it had been rendered before the Federal authorities had definitively decided the conflict of competency raised by the defendant canton.

The executability of a decision presupposes its legal force, and the latter in turn assumes the competency of the court, which was not determined until the plea of lack of competency had been decided by the Federal authorities (Ullmer, I, No. 45).

By Article 14 of the Federal Constitution the use of reprisals and measures of retorsion among the cantons is also forbidden (Ullmer, I, No. 43).

B. The power of cantons to conclude intercantonal treaties.

Within the limits of their jurisdiction, the cantons have the right to conclude treaties (concordats) with each other within the limits of Article 7 of the Federal Constitution, which reads:

Special alliances and political treaties between the cantons are prohibited. On the other hand, they have the right to conclude agreements among themselves with regard to matters of legislation, judiciary and administrative. However, they must submit such agreements to the Federal authorities for examination, who, if the said agreements contain anything in contradiction to the Confederation or the rights of other cantons, are authorized to prevent the execution thereof. In the contrary case, the cantons in question are entitled to request the coöperation of the Federal authorities for the execution of such agreements.

Disputes with regard to the interpretation of concordats are decided by the Federal Court upon the basis of Article 113, Nos. 2 and 3, of the Federal Constitution (*vide supra*, p. 152.) The Federal Court (and prior to 1874, to some extent the Federal Council) has made the following detailed regulations:

(a) The constitutional right of the cantons is recognized as regards the conclusion and validity of concordats. If an intercantonal treaty has not been concluded in a constitutional way,—for example by evasion of the referendum,—it does not bind the authorities of the cantons (R. O. 40, I, pp. 554, 557). An agreement by correspondence has not the force of a concordat for the execution of which an appeal may be made to the Federal authorities (Ullmer, II, No. 1113). In a justified rejection of adhesion to a concordat, no conditional adhesion, nor any other contractual obligation, of the rejecting canton may be presumed (R. O. 7, pp. 467/8, 725). Nor does a mutual obligation exist between cantons which have agreed upon a law of bills of exchange and established it as cantonal law (R. O. 4, p. 74).

An example of an intercantonal treaty of an extraordinary kind is the separate alliance made in 1845 between seven Catholic cantons, whereby they mutually obligated themselves to oppose by force of arms (*"Sonderbund"*) the revision of the Federal Treaty of 1815. The dissolution of this alliance, decided upon by the Federal authorities because it was in violation of Federal law, was forcibly brought about in 1847 through the so-called Sonderbund War. Later, a dispute arose among the former members of the Sonderbund concerning the joint costs of the war, three of the cantons refusing to participate in defraying the costs. The complaint made on this subject was in principle approved by the Federal Court. In spite of the fact that the Sonderbund constituted a violation of the Federal law, the Federal Court declared it to be valid, for the following reasons:

The separate alliance, as an act in public law, having originated from the agreement and participation of a number of cantons which were declared to be sovereign by the Treaty of 1815, does not come within the category of immoral or criminal undertakings, and the lawful powers themselves did not look upon this alliance, either before or after the victory, from this point of view. The said powers sought to dissolve the coalition of individual parts of the former Confederation of States, formed against the public law of the Confederation, at first by means of friendly remonstrances and then by force of arms, and after this dissolution had been achieved, they applied exclusively measures of civil law in their dealings with the cantons which had participated in the unlawful undertaking. After all these antecedents, this tribunal is, therefore, in its consideration of the dispute, not empowered to take a juridical point of view, which would run counter to the conditions as they have shaped themselves historically (Ullmer, I, No. 378).

(b) The contents of a concordat may, within the limits of Federal law, especially of Article 7 of the Federal Constitution, be of any nature whatsoever. Thus, several cantons could form a simple company under the jurisdiction of purely private law, for the purpose of constructing an Alpine highway (R. O. 10, pp. 148, 158).

The Federal law supersedes the law of concordats, but when legislative

jurisdiction is given to the Confederation in a matter regulated by concordats, the latter remain in force until the Federal laws are actually adopted (R. O. 1, p. 196). Simultaneously with the concordat, cantonal ordinances decreed in execution thereof naturally go out of force (R. O. 25, I, p. 48). The law of concordats, on its part, supersedes cantonal law.

Concordats are binding for cantons which have adhered thereto as long as they have not declared their withdrawal or as long as the concordats have not been annulled by Federal legislation. Cantonal legislation cannot affect the validity of concordats, but can only afford the canton in question a reason for denouncing them on its part or for declaring its withdrawal (R. O. I, p. 196).

(c) Concerning the temporary and material limits within which a concordat may be enforced, the Federal Court had to render a decision with particular reference to the concordat of August 23, 1912, concerning the guarantee of mutual legal aid for the execution of public law claims since the concordat itself makes no provision on this point. The question that was under discussion was whether the courts of the Canton of Luzerne were compelled to enforce the resolution of 1909 of the revenue authorities of the Canton of Nidwalden, by which a citizen residing in Luzerne and formerly in Nidwalden was obliged to pay arrears in taxes because of insufficient taxation of his property during the years 1899 to 1908. The Federal Court decided, on the basis of general considerations, that the concordat could not be applied, and that, therefore, the aid of the courts had been of right denied.

The point of departure in this case must be the fact that the granting of legal aid for public law claims of another State brings with it the recognition of the public law of this State, and in addition the recognition of the authority of the latter over the inhabitants of the requested State and over their property, respectively. But such a recognition will, as a rule, only be extended for the future. To extend it to past acts, and thus to attribute to such acts an effect which did not previously belong to them, would be against considerations for the protection of its own inhabitants, which no State will without duress disregard. Thus, in the law of extradition, too, in which we are likewise dealing with legal aid for public law claims, and especially penal claims of a foreign State, it is recognized that when a State which has hitherto not extradited concludes a treaty of extradition, the duty of extradition resulting therefrom refers in case of doubt only to such offenses as are committed after the conclusion of the treaty. The point of view which in this case has prompted the limitation of legal aid to (penal) claims which have originated after the conclusion of the legal aid treaty—the consideration for the protective relation based upon residence in the canton—applies, however, in exactly the same way if the legal aid must be accorded not by surrender of the person of the inhabitant but by acquiescence in the previously forbidden exercise of compulsion against his property. The reversion to the object of legal aid leads to the same result. The concordat has its origin in the conviction that the public law relation of the cantons as

members of a federal State brings with it the duty to assist one another in the collection of those taxes which each one requires for the fulfillment of its public duties. But, now, all these taxes—on property, industry, inheritance, as well as supplementary and penal taxes connected therewith—are by their nature intended for immediate collection. Taxes which have not been paid within a definite period are regularly cancelled and are disregarded in the budget of the economic and financial administrations of the State. The theory of the concordat is, therefore, observed also if the duty of legal aid is limited to the claims which originated or which became legally valid after its going into force. It may be assumed, moreover, that at least the great majority of the cantons, although they did not expressly state so, desired as a matter of fact to bind themselves only within the aforementioned limits. But this must be sufficient, after what has been said, to interpret the concordat in the sense indicated (R. O. 39, I, p. 614-5).

(d) The question of the abrogation of intercantonal treaties was decided by the Federal Court in the case of Luzerne v. Aargau (February 17, 1882). The case involved the abrogation of a treaty concluded in 1830 between the two cantons in settlement of a dispute, according to which the territory of a commune of Luzerne extended into the territory of Aargau, while *vice versa* the territory of a commune of Aargau extended into the territory of Luzerne (*vide infra*, p. 174). In its decision the Federal Court determined that the right of a unilateral withdrawal did not follow from the treaty itself. The court did not approve the contention of the government of the Canton of Luzerne that in State treaties concerning matters of public law each party has the right of withdrawing for its own part. Said the court:

It may be admitted that in State treaties which do not concern the regulation of concrete juridical relations, but contain merely agreements on rules of objective law, as for instance, on the uniform legal regulation of certain matters in law, it is to be assumed, even in default of special treaty stipulations to this effect, that the parties have the right of unilateral denunciation, since in such treaties it is not to be assumed in the nature of the matter that the parties had desired to bind themselves forever and irrevocably. But this follows simply from the presumptive will of the parties, or from the special nature of these State treaties. On the other hand, it is utterly incorrect to postulate as a general rule such a unilateral right of withdrawal on the part of the party bound, by such State treaties, concerning public law relations, whereby concrete juridical relations are regulated and subjective rights and duties of the contracting States are determined. Such a unilateral right of withdrawal on the part of the engaged party is rather plainly irreconcilable with the manifestly established principle of the obligation of treaties which provide a limitation on the sovereignty of one contracting party, which principle can not in justice be doubted as a well-established rule in international law. On the contrary, it is recognized in law that such treaties remain binding for both parties as long as no special juridical reason for their annulment has arisen. Now, even if the legal principles concerning the annulment of State treaties are not incontestably and completely established in theory, and even less so in practice, so much is nevertheless undisputed that treaties concerning the establish-

ment or recognition of State servitudes can not be denounced by a party thereto because of mere modifications of the Constitution or of legislation made by the said party, but rather that State servitudes, irrespective of such changes, remain as permanent burdens limiting the territorial sovereignty of the engaged State and may be annulled unilaterally by the party bound only if their continued existence is incompatible with the self-preservation of the said State as an independent community, or with the essential purposes thereof, or if a change of conditions has come about which, in accordance with the recognized intentions of the parties at the time of their establishment, formed the tacit condition of the existence of the treaties (R. O. 8, p. 56/7).

Such a reason for annulment did not actually exist; therefore, the right of unilateral denunciation of the State treaty was not accorded to the Canton of Luzerne.

(e) The position of the Federal Court in disputes over concordats has been determined in various decisions to the effect that recourse to the Federal Court is permissible only in so far as the concordats "are applied as intercantonal treaties, but not in so far as it is a question merely of their application as cantonal law in the interior of the canton" (R. O. 1, p. 312/3; 2, p. 233; 3, p. 80; 6, p. 224; 7, p. 54). From the fact that the Federal Court must decide complaints with regard to violation of concordats as a State tribunal, and not as a civil court, it follows: "That the point of view of the uniform application of provisions of concordats as private law regulations within the jurisdiction of the particular cantons is not decisive for the Federal Court, but merely the point of view of the protection of an intercantonal treaty as an integral part of public law."

If, therefore, individual provision of concordats are capable of different interpretations, the Federal Court can not refuse to the cantonal courts "to permit them to interpret such provisions as they deem proper, so long as the cantons involved do not themselves elucidate, by an annex to the concordat, the points which are in doubt, even if the uniform application of the concordat within the territory affected by it should thereby be disturbed" (R. O. 4, p. 245/6).

It goes without saying that only those cantons or their citizens in whose interests the concordats are concluded, may complain as to violations of concordats (R. O. 4, p. 592).

3. TERRITORIAL RELATIONS BETWEEN CANTONS

The rights of cantons emanating from their territorial sovereignty have upon several occasions become the subject of intercantonal disputes before the Federal Court. The dispute revolved in several cases about the position of the boundary (upon the land or in rivers), in several other disputes about the question whether and to what extent a canton must, upon its own territory, tolerate the acts of another canton done either upon the basis of a special legal title or fortuitously. Further cases concerned the question of

the division of cantonal sovereignties in the use of the water of rivers flowing from one canton into another.

In the presentation of boundary disputes between cantons, we must limit ourselves here to revealing the general principles which were used by the Federal Court as decisive factors; since an examination of the details of the decisions would lead too far afield. Furthermore, the Federal Court bases its decisions largely upon facts and documents which do not possess an interest outside the limits of the individual case.

(a) On October 12, 1892, the Federal Court settled a boundary dispute between Graubünden and Tessin (R. O. 18, p. 673 ff.). In the decision the following noteworthy passage appears: "The course of the boundary between two States is either one that has been historically recognized, or determined by treaty agreement. There are no generally binding rules concerning the course of a boundary of state territories" (p. 683). In the case before us, the court stated, it can only be a question whether the boundary line, claimed by Graubünden, is the line which has been historically recognized. In this matter the circumstance that this boundary line appeared in the official Confederate maps for about thirty years without any protest on the part of the Canton of Tessin "furnishes the basis of a certain presumption in favor of Graubünden." But the decision continues: "But these topographical records are not decisive, especially since it is not at all certain upon what basis the boundary inscribed therein rests, particularly whether deputies of the two cantons coöperated in the determination of the boundary" (p. 684). The claim presented by the Canton of Tessin to the effect that it had always exercised police duty upon the territory in dispute, and that, consequently, the territory belonged to it, was rejected by the Federal Court, not only because of lack of evidence, but also because such an exercise of State sovereignty would be decisive only in case it had been effected with the knowledge of the other party (i.e., the authorities of the Canton of Graubünden) (p. 688). The juridical examination of legal transactions from the years 1494 and 1503 finally proved to be the decisive factor in the decision, which was favorable to Graubünden (p. 684/5).

In the decision of December 11, 1895, in the case of Appenzell—Ausser-Rhoden *v.* St. Gall, concerning the boundary upon the Säntis Mountain, the Federal Court again had an opportunity to enunciate basic principles concerning the determination of a boundary. It stated:

It is clear that in the present case we can not primarily take the natural topography into consideration, but that we must rather attach a preponderating importance to the exercise of sovereign acts, to traditional possession, etc. In fact, deviations of the political boundary from the natural one occur frequently, and particularly in mountainous regions deviations of the political boundary occur from the water sheds . . . (R. O. 21, p. 967).

The request of the Canton of Appenzell—Ausser-Rhoden that it be determined that the boundary toward the Canton of St. Gall extends over the

peak of the Säntis was approved. (Thereby it was settled that the three cantons of St. Gall, Appenzell—Ausser-Rhoden and Appenzell—Inner-Rhoden meet at the peak of the Säntis.) The Federal Court reached this decision after it had determined

that after a tradition extending over more than one hundred and fifty years, the Säntis served as a boundary for Ausser-Rhoden too; that until very recently it had been considered by general popular opinion, as well as by the authorities of all three cantons involved, as the boundary of the three cantons; that Ausser-Rhoden exercised a number of sovereign acts in the disputed territory; that the government of St. Gall knowingly permitted this and for its own part waived the exercise of such acts, although it had upon several occasions had the opportunity of such exercise. On the other hand, the only appreciable fact which essentially favors St. Gall is the natural boundary and the actual exercise of hunting on the part of hunters from St. Gall (R. O. 21, p. 972).

In view of such circumstances, the question had to be decided in favor of Appenzell—Ausser-Rhoden.

(b) In two cases the Federal Court rendered a decision concerning the course of the boundary in a river which forms the boundary of two cantons. In both the disputes were between the Cantons of Schaffhausen and Zurich concerning the boundary in the Rhine. In the suit decided on November 9, 1897, Schaffhausen claimed that the boundary ran along the left (Zurich) bank of the Rhine and that, consequently, the sovereignty over the entire Rhine belonged to it. This claim was approved by the Federal Court as against the claim of Zurich, according to which the boundary lay in the middle of the Rhine. The Federal Court based its decision upon a Confederate award of the year 1555, in a dispute between the same parties, by virtue of which the sovereignty over the entire Rhine was accorded to Schaffhausen (R. O. 23, p. 1439 ff.). Concerning the significance of boundary designations upon maps, the court stated that it is forthwith apparent "That the juridical relations between Schaffhausen and Zurich, as they were established by the award of 1555 through the topographical representatives of the two cantons and the indications of boundaries contained therein . . . could not undergo any modification."

The decision further answered negatively the question as to whether the juridical situation established by the aforementioned award has been modified by the development of international law:

The circumstance that now, in accordance with the development of objective law, more importance is attached to the doctrine of international law, according to which the boundary of two States divided by a river is usually found in the middle of the said river, and less importance is attached to the actual possession and events of feudal law, can not now effect any change in the juridical condition determined in such an authentic way anymore than it could have done so previously. For the principal question to be decided today is whether the present dispute has not already

been decided, at least to a certain extent, in a legally binding manner, and whether thereby a condition has been created which must be guarded according to the principles of acquired rights, regardless of how the dispute would be decided according to the now prevalent norms and conceptions (p. 1452/3).

The Federal Court further asked itself whether by virtue of the political revolution of the years 1798-1803, the boundary between the litigant cantons had not been changed. By the Helvetic Constitution of 1798, Switzerland had been made a Centralized State and thereby the former cantons had been degraded to mere provinces. In making this change and in apportioning the provinces, the former cantonal boundary between Zurich and Schaffhausen had not been preserved in every case. The court answered:

From this, however, it does not in any way follow that, even if we disregard the territorial changes based upon express sovereign decree, the provincial boundaries have tacitly, as it were, experienced a modification in the sense of modern theories and that, subsequently, when the provinces, by means of the Mediation (Constitution of 1803) were again raised to the position of independent cantons, these new boundaries were decisive for their territorial extent. On the contrary, the natural conception leads to the assumption that the boundaries of the regenerated cantons in general, with the exception of changes which were made intentionally and sanctioned by public documents, have remained the same as those of the former cantons, dominions, etc. (p. 1453).

Finally, the question had to be decided whether a modification of the boundary had been effected by conclusive acts of the two cantons. Special consideration was given to the fact that Schaffhausen without protest allowed the authorities of Zurich to grant concessions for water works upon the left bank of the Rhine and to collect a water tax therefor. But this question, too, was answered in the negative.

In all cases, generally, a modification of relations of sovereignty once determined between two cantons can be effected only by a formal treaty originating with the competent organs of the two cantons and further subject to the approval of the federal authorities. And certainly the mere fact of the encroachment of one canton upon the sphere of sovereignty of the other, or the toleration of such acts of encroachment, respectively, cannot be sufficient therefor, if such acts of encroachment are limited to a definite kind of public administrative activity, as in the present case, in which encroachments have taken place only in the matter of concessions, while the defendant has not even claimed that any act of judicial sovereignty, the exercise of which could most readily be considered as evidence of a tacitly effected modification of the bounds of sovereignty, has ever been committed on the part of Zurich with reference to the side of the Rhine in question (R. O. 23, p. 1458/9).

On May 28, 1907, the Federal Court decided the other suit between Zurich and Schaffhausen concerning the boundary at another point in the

Rhine. According to the claim of Zurich, the right (northern) bank of the Rhine formed the boundary, and according to the claim of Schaffhausen, the middle of the Rhine was the boundary. Zurich sought to establish its claim by a deed of purchase of the year 1496, but had its plea rejected by the Federal Court because, as the court stated, it had not established proof "of the rightful acquisition of the essential rights of sovereignty—of high jurisdiction, of the right of collecting tolls, and of the right of safe-conduct (convoy) upon the Rhine—by virtue of this deed" (R. O. 33, I, p. 592/3). Since only from these rights the present uniform State and territorial sovereignty has developed, their acquisition on the part of Zurich would have been necessary as a basis for its present sovereignty (p. 577). Eventually, Zurich rested its claim upon the legal basis of the *usucapion* of the essential sovereign rights in question, but this plea was also rejected by the Federal Court. Zurich had claimed that the norms of private law in force at that time were the deciding factor for the *usucapion*.

Now, even if this juridical point of view, especially with reference to the acquisition of sovereign rights to rivers, should be accepted as correct, it would still have to be considered that the respective German law of real property in the Middle Ages was not familiar with *usucapion* in the Roman juridical significance of a positive basis for the acquisition of property, but exclusively in the negative sense of an exclusion of the right of contestation of the person really entitled thereto against the unrightful acquirer, in so far as the contestation was not made within a definite period—of a maximum of thirty years—and on the condition that this juridical consequence of the exclusion of contestation naturally presupposed the knowledge of the juridical claim in question, that is, its generally known acquisition or the exercise or use of the right, manifesting itself as having been rightfully acquired and of a permanent character. In the given case, however, none of these conditions has, according to what has been said above, been fulfilled (R. O. 33, I, p. 593).

The additional argument of Zurich, namely, immemorial prescription, was also not admitted. According to the definition of the Federal Court

the legal institution of immemorial prescription or of time immemorial means that—as has been recognized, especially with regard to sovereign rights—a legal foundation is acknowledged for a legal exercise of right since the memory of man, that is, eighty to one hundred years, and has been actually uncontested, regardless of titular proof (p. 594).

Zurich did not succeed in proving such a legal exercise. Therefore, the Federal Court decided that the boundary along the district in question lay in the middle of the Rhine (p. 599).

(c) The Federal Court rendered two decisions concerning the division of cantonal sovereignties over rivers which flow from one canton into another. The first, of January 12, 1878, decided a dispute between Aargau and Zurich. By the construction of a water power establishment, under a

concession granted by the governmental council of Zurich on November 16, 1872, and of a pond at the Jonabach in the Canton of Zurich, the mills situated down-stream on Aargovian territory suffered a prejudice in their water supply which could only be remedied by the construction of an auxiliary pond upon Aargovian territory. The government of Aargau requested the Federal Court to declare the concession invalid. The Federal Court, basing its decision upon the principle of equality of the cantons (*vide supra*, p. 159), pronounced the following judgment with regard to the division of cantonal sovereignties over flowing water:

Now each canton has for itself, by virtue of its territorial sovereignty, the right of free exercise over its territory and also over the public waters located thereon. In the case of public waters which extend over several cantons and, therefore, belong to several cantons, it follows from the equality of the cantons that none of them may, to the prejudice of the others, take such measures upon its territory, as the diversion of a river or brook, construction of dams, etc., as may make the exercise of the rights of sovereignty over the water impossible for the other cantons, or which exclude the joint use thereof or amount to a violation of territory. On the other hand, regardless of this, no canton has, in its relation to the other cantons, the right of adapting the exercise of the sovereign rights over the water to its wishes and special needs, regardless of how desirable and expedient the establishment of uniform principles in such cases might be (R. O. 4, p. 46/7).

The decision continues that it must be generally observed

that a right of the Canton of Aargau to uninterrupted conveyance of all the water in the Jona does not exist in every case. With regard to public waters, the cantons have no private ownership, but only sovereignty, from which is not in any way derived any right by which in some instances the canton situated up-stream could be entirely deprived of the use of the water or, at least, of a certain manner of use. Each canton is rather entitled, by virtue of its sovereignty, to take the necessary measures for a rational utilization of the public waters, corresponding to its needs, but only in so far, as was mentioned above, as the joint use of the water is not thereby made impossible but is left to the rest of the cantons in the same manner (p. 47).

This, the Court stated, was the case in concrete. The effects of the concession are "in themselves no different for the Canton of Aargau than they are for the Canton of Zurich" (p. 47/8). As a matter of fact, the concession had been granted under the Zurich law concerning hydraulic works, paragraph six of which law provides that protests against the granting of concessions because of diminution of the current of water must be rejected if the diminution can be remedied by other measures, for example, construction of an auxiliary reservoir, and these measures are carried out by the grantee and are "placed at the unencumbered disposal of the protestant." Now, the Zurich grantee was bound by the concession to deposit fr. 6700 in a bank to the credit of the Aargovian millers as an indemnifica-

tion for the construction of a regulating pond. With regard to the duty of constructing such a pond, the Federal Court says that distinction must be made between

the water rights already existing over the Jona as rightfully acquired private rights, and the water power hitherto not used. For while the hydraulic law of Zurich and the concession of November 16, 1872, as will be discussed below, binds the proprietor of such existing water works who desires to increase the volume of water to introduce such measures of his own accord and at his own expense as are necessary to assure to the other parties entitled thereto the accustomed use of the water during the ordinary working time from 4 a. m. to 8 p. m., neither the law nor the concession mentions such a duty with regard to the water power which is still free and unused; so that under certain circumstances, the acquirer of this water power is compelled to take certain measures for the suitable utilization thereof, which would have been unnecessary under the circumstances previously obtaining. But granted that this is actually the case, it is manifest that there can be found therein no encroachment upon the sovereign rights of the Canton of Aargau which violate the principle of equality. For the acquirer of the said water power (which, by the way, has existed for a long time and the utilization of which is entirely uncertain), would thereby merely be placed in the same situation in which the Zurich grantees find themselves with regard to their establishment, and now surely the canton of Aargau can not expect, without itself violating the principle of equality, that the Canton of Zurich should submit the use of the water power which exists in its territory to exceptional limitations in order that the former, the Canton of Aargau, may use its own water power more freely. Rather do the statements made above hold in the present case also. A right on the part of the Canton of Aargau in its relations to the Canton of Zurich to maintain the previous condition of an interrupted current of water does not exist in every case. Its right embraces only the joint nature of the use, and this is not only not excluded but possible, as it has been at all times, although with certain modifications, in the same manner as in the Canton of Zurich (R. O. 4, p. 48/9).

The construction of a pond upon Aargovian territory, the court stated, could not be ordered by the Zurich Government without encroaching upon the sovereignty of the Canton of Aargau; therefore, the said government decreed the deposit of the costs. But since there existed no definite decision of the Zurich governmental council concerning the question of indemnity, it devolved upon the Aargovian millers to obtain such a decision. Under the circumstances they had no basis for complaint. At the conclusion of its considerations, the court states that it is not necessary to show at greater length that "The water rights acquired in the canton of Aargau take effect in the territory of the Canton of Zurich only in accordance with the legislation of Zurich and can, therefore, have no greater protection than the similar rights acquired in the Canton of Zurich itself" (p. 50). In accordance with these considerations the complaint of the Canton of Aargau was at the time rejected. If the Federal Court at the beginning of its consideration said that the decision is based upon the principle of the equality of the can-

tons, it must be observed in objection thereto that this principle would hardly have been sufficient for finding a solution, and that the Federal Court rather applied the 'aforementioned paragraph six of the Zurich Hydraulic Law as intercantonal law, without, however, admitting the fact.

In the dispute of Aargau v. Solothurn, decided on December 9, 1892, the question was whether the Canton of Solothurn was permitted to exact a fee for conceding a right to water power, in spite of the fact that only the beginning of the canal lay in its territory, while the continuation thereof, together with the engines, was situated in the territory of the Canton of Aargau. The Federal Court answered the question in the affirmative. After the decision expressly refers to the general considerations in the decision of January 12, 1878, in the case of Aargau v. Zurich (R. O. 4, p. 46, *vide supra*, p. 169 ff.) it states:

Only within these limits (which follow from the equality of the cantons) each canton is sovereign with regard to the public waters situated in its territory. Its legislation decides as to ownership of the public waters in its territory, as to the freedom or control of the use of water, as to the origin and juridical nature of special rights in the use of water, and the burdens connected with such rights of use, etc. It follows therefrom that at the point where the motive power for water works is acquired from rivers which belong to various cantons, the exaction of fees for granting concessions devolves upon the interested cantons in proportion as the water power is furnished by the fall of water in their territory. Each canton, then, appears to be entitled in so far as the motive power is acquired from parts of rivers which are subject to its territorial sovereignty and hence fall under its jurisdiction. The place at which the establishments designed for the utilization of the water power are constructed is in no way an exclusively deciding factor, but it depends upon the source from which the water power used is itself derived. The authorization of the use of the water and the burdens connected therewith must be decided in accordance with the legislation of those cantons in which the water power is acquired and in which, consequently, the use in question was to be granted. The fee for a concession is to be paid for the authorization of the use of the water and hence accrues to those cantons whose right it was to concede the said use (R. O. 18, p. 701).

(d) In two cases between the Cantons of Solothurn and Aargau, decided by the Federal Court, the dispute revolved about the endangerment of territory of Solothurn because of target practice upon the territory of the Canton of Aargau. By the first decision, November 1, 1900 (R. O. 26, I, p. 444 ff.), the Canton of Aargau was forbidden to use an existing shooting establishment in the customary manner. The Federal Court pronounced the following considerations with a view to determining the reciprocal rights and duties of the cantons:

The conception of sovereignty and territorial jurisdiction varies considerably as far as internal relations, state territory and persons and things situated thereon are concerned. But however this may be, it is an accepted

fact with regard to external relations, that is, relations with other states, that definite absolute rights emanate from sovereignty and territorial jurisdiction which must necessarily be recognized by the other states, among them particularly the right of unrestricted dominion over land and people. This right, however, excludes all influence of another state upon the territory of the first state or of its inhabitants, and indeed not only the usurpation and exercises of sovereign rights of the first state, but also an actual encroachment which might prejudice the natural use of the territory and the free movement of its inhabitants. From this point of view the canton of Solothurn appears in fact to have been injured in its territorial majesty and in its sovereignty by the attitude of the Canton of Aargau. If objection should be made thereto, to the effect that the Canton of Aargau for its part may use its territory or cause it to be used as it pleases, the reply must be that in international law, especially in relations within federal states, the principle of law of vicinage holds to the effect that the exercise of one's own rights should not prejudice the rights of one's neighbors: these rights are of equal value, and in a case of dispute a rational compromise must take place according to the natural conditions. In the present case the Canton of Aargau expects that the Canton of Solothurn should tolerate influences which a private owner would have to tolerate from his neighbor only in case of a servitude and which a canton too may forbid as long as it is not obliged to tolerate them in consequence of the existence of an actual state servitude in favor of the neighboring canton. Another consideration leads to the same result: the Canton of Solothurn, by virtue of its sovereignty, has the right and duty to care for the general public safety of the inhabitants of its territory. It might entrust the duty of self-protection to the private persons or corporations injured or threatened personally or in their property, if these persons or corporations were determined or determinable, while the duty of the entire community or of its organs begins as soon as undetermined persons and things are exposed to dangers; however, it would be doubtful whether the canton is authorized to represent the individual rights and interests of single citizens in its exterior relations. The right and the power of a canton to command and to forbid do not extend beyond its boundaries. If, therefore, the land and the people are threatened by another canton in such a way that public steps seem necessary, the threatened canton may demand of the other canton that the latter put an end to the trouble by means of its force. In such a case the *duty of juridical assistance* must take the place of the *right of self-help*, which is in contradiction to the nature of a federal State and which in the Swiss Confederation is furthermore inadmissible in accordance with the historical foundations of the Confederation and the express provision in Article 14 of the Federal Constitution" (R. O. 26, I, p. 450/1).

Thereupon, the city of Aargau (which owns the shooting range) had a project made for the improvement of the existing establishments. Since the Canton of Solothurn refused to discuss this project, the Canton of Aargau moved the Federal Court to decree that the shooting be again permitted after the completion of the projected improvements. This motion was approved. "The demand of the Governmental Council of Solothurn that all endangerment be absolutely abolished apparently goes too far," for absolutely safe shooting-ranges are found only in mountain valleys. There-

fore, a certain danger, although unimportant, is necessarily attendant upon shooting in flat country (to which the region of Aargau belongs). In accordance with the Confederate military legislation, the communes are bound to furnish the shooting ranges necessary for the fulfillment of the prescribed military target practice for citizens.

It is, therefore, quite impermissible to prevent the general fulfillment of this public duty by demanding absolutely effective measures of safety which could not at all be satisfied, according to the opinion of the experts. And in consideration of the fact that a Federal duty is involved, no more precautions may be demanded for shooting ranges near the boundary of two cantons than are required for shooting ranges in the interior of a canton (R. O. 41, I, p. 137).

(e) In several cases the Federal Court has recognized the admissibility of State servitudes upon the territory of one canton in favor of another canton. By a treaty between the Cantons of Luzerne and Aargau of July 9, 1830, it was determined that the territory of a commune of Luzerne extended into the State territory of Aargau, and that *vice versa*, the territory of an Aargovian commune extended into the State territory of Luzerne. The Federal Court declared that a State servitude had been established by this treaty, or rather had,

in accordance with earlier tradition been determined and recognized in its existence, by virtue of which the Canton of Aargau has the right to extend the district of its commune Reitnau, and, consequently, the operation of its legislation, beyond the bounds of its territory to a delimited part of the State territory of Luzerne; and that, on the other hand, the sovereignty of the Canton of Luzerne over this part of its territory is correspondingly limited. . . . The legal existence of State servitudes which grant to one State certain public rights upon the territory of another State is established beyond all doubt (R. O. 8, pp. 55, 56).

Concerning the right of unilateral denunciation of this treaty, which formed the origin of the dispute, compare p. 164.

In a complaint which was rejected by the Federal Court on November 21, 1887, the Canton of St. Gall had demanded that the Canton of Thurgau be required to recognize the inhabitants of certain farms of St. Gall as "school citizens" of communes of Thurgau, adjacent to these farms, that is, to admit the St. Gall children to their schools. This alleged obligation of the Canton of Thurgau would then naturally establish the right of the latter

to extend its legislation and administration in school matters beyond the bounds of its State territory to territory of St. Gall, a right which legally would probably have to be classified as a State servitude. Such a juridical relation, whereby one State is bound to fulfill certain public obligations upon the territory of another State in place of the latter, and possesses certain public rights for this purpose, is juridically possible. However, the

existence of such a juridical relation is not to be assumed, but in default of absolute and conclusive evidence to the contrary, the assumption must be that, as a rule, rights and duties in the administration of public service do not extend beyond the State territory. The following bases of origin or of recognition of the existence of such a juridical relation may be used: State treaties, other State or international documents binding the States involved (such as international arbitral awards and the like), and finally immemorial usage (R. O. 13, p. 408).

The Federal Court decided that no State servitude was involved, but that the actual exercise must be conceived as a "mere toleration *rebus sic stantibus*" (p. 410).

Two cases decided by the Federal Court dealt with the interpretation of a treaty concluded between Uri and Schwyz in the year 1350. By virtue of this treaty the inhabitants and property-owners of a commune of Schwyz had received the right of using the wood in a forest situated in the State territory of Uri. The legal relation established thereby "forms a so-called servitude in public law, by which the State sovereignty of one State is limited in favor of another State" (R. O. 34, I, p. 281). Concerning the possibilities of this servitude, the Federal Court further states:

The fact that the exercise of the right does not devolve immediately upon the State as such but upon a definite number of its citizens, in the present case the inhabitants and property owners of Riemenstalden, and on the other hand, that not the State, but a corporation, seems immediately encumbered, is a phenomenon not infrequent in State servitudes, which is found with particular frequency in the so-called economic State servitudes—forest rights, fishery rights, rights of hunting, etc. . . . But the subjects benefited and obligated in a State servitude are always the State organizations in question, whereby it is possible that a relation in private law corresponding to the nature of the public servitude may exist between the subjects immediately favored and encumbered (R. O. 34, I, p. 281/2).

The further statements of the Federal Court in these two cases are not of interest here, since they concern merely the interpretation of the treaty of 1350; in the first case (R. O. 34, I, p. 274 ff.), the material extent of the right of use,—in the second case (R. O. 41, I, p. 511 ff.), the persons entitled to enjoy the said use. But it may be mentioned here that a dispute concerning the treaty of 1350, between Schwyz and Uri, was decided in 1845 by a Confederate court of arbitration. By virtue of that decision a special intercantonal organ was created which to this day still has the duty of deciding complaints of citizens of Schwyz who are entitled to make use of the forest, against decrees of the authorities of Uri concerning matters pertaining to the forest police (R. O. 34, I, p. 275). The members of this commission are named jointly by Uri and Schwyz. In spite of the fact that since 1845 the Confederation itself has created organs before which a citizen injured in his rights through a cantonal decree can make complaint, the

commission in question is still considered as rightfully existing (R. O. 34, I, pp. 283, 284).

4. THE INTERCANTONAL PAUPER LAW ⁶

The Swiss Pauper Law is very closely connected with the right of citizenship. Every Swiss is a citizen of a commune and, by virtue thereof, of the canton wherein this commune lies. He may also be a citizen of two or more communes and cantons. The right of citizenship (also called *Heimatrecht*), is entirely independent of the place of residence. A very great part of the Swiss people resides elsewhere than in its commune of citizenship (home commune) without being affected thereby in its right of citizenship. Neither is the previous right of citizenship lost, nor is the right of citizenship acquired, in the place of residence; every newly acquired right of citizenship or loss thereof is established (if the legal conditions have been fulfilled) only at the express desire of the acquirer.⁷

The care of the poor in Switzerland is left to the cantons. Support in case of impoverishment devolves upon the home canton. Most of the cantons have entrusted this duty to the home commune. In the relations of the cantons to each other, similarly as in international law, the principle of nationality and not that of territoriality obtains in the matter of care for the poor (R. O. 40, I, p. 413-4).

Therefore, the Federal Court has declared that the following statements hold also for intercantonal relations:

There exists as such no international duty on the part of the State to keep within its territory foreigners in need of support and to care for them, but rather is the home State bound to take charge of its citizens who have become public charges, in so far as the said State has not made any State agreements to the contrary. And, in fact, no agreement to the contrary can be assumed as existing merely as the result of the general assurance, contained in many State treaties, of reciprocal similar treatment of the citizens of the two contracting States because of the fundamental connection between almonry and State citizens' rights, but a special convention must be made for this purpose (R. O. 40, I, p. 413/4).⁸

With regard to the application of the principle of nationality in intercantonal pauper laws, a number of disputes have arisen between cantons.

The Federal Council (Ullmer, II, No. 1113) and the Federal Court (R.

⁶ There is a work on this subject by Ed. Gubler: *Interkantonaies Armenrecht*, Zurich, 1917.

⁷ A revision of the laws on citizenship for the purpose of introducing the principle of *jus soli* for the naturalization of foreigners is under way.

⁸ According to Article 45, paragraph 3, of the Federal Constitution, permission for domiciliation may be withdrawn in the case of Swiss citizens from other cantons "who are a *permanent* burden on public charity and whose home commune or home canton does not grant suitable support in spite of official request." The Federal Court in the said decision concludes therefrom that the duty of support devolves upon the community of the domicile in the case of merely *temporary* need."

O. 13, p. 417; 29, I, p. 450), have decided that a canton which has incurred expenses on account of Swiss paupers not naturalized (or a citizen) in the canton, can not demand recompense for its expenses from the canton of citizenship. The duty of support of the home commune is merely a principle in cantonal law from which another canton may derive no rights.

Upon several occasions the Federal Court considered the question of the support of double citizens (persons who are citizens of two cantons). It was decided that the home canton in which the needy double citizen is domiciled can not demand any contribution toward its costs from the other home canton. The Federal Court bases this decision upon the consideration that a positive rule of Federal law from which such a duty of contribution would follow, does not exist. Such a duty can not be derived from the nature of the right of double citizenship any more than it can be derived from the fact that both home cantons would be similarly bound to receive a joint citizen if he were deported from a third canton. Therefore, such conflicts,

which have arisen from the right of double citizenship, in other respects regulated by Federal law, are not solved in such a way that the various rights of citizenship are placed upon the same plane, which would suppose an equal distribution of the rights and duties flowing therefrom, but in all such cases a citizen's right, and consequently that of the canton in which the said citizen last lived, are designated as the preponderating right.

Furthermore, the court stated it could not apply the principle of implied agency, or the principle of the duty of redress in joint undertakings (R. O. 23, p. 1468). The court also said that a customary law was not involved, although several cantons had, previous to the rendering of these decisions, arranged a partition of the costs of support in the case of double citizens (R. O. 29, I, p. 449/50).

The question as to which of several cantons concerned was bound to support needy persons who are naturalized in none of the cantons, whether they are Swiss citizens from other cantons, or foreigners, was decided upon other considerations. With regard to Swiss citizens from other cantons, the cantons are bound by virtue of the Federal law of June 22, 1875 (concerning the costs of the care of citizens of other cantons who have fallen ill and of the burial of such citizens who have died), passed in execution of Article 48 of the Federal Constitution, "To accord to pauper citizens of other cantons who fall ill and who can not return to their home canton without injury to their own health or to the health of others, the necessary care and medical treatment, and in case of death, a suitable burial." (Recompense of the costs is not made from the public coffers or institutions of the home canton.) The practice which has developed with the Federal law concerning the intercantonal distribution of the duty of support (cf. *infra*, p. 179) is analogously applied, according to a decision of the Federal Court, when the support of a foreigner is in question between the two cantons (R.

O. 40, I, p. 415). With regard to the reciprocal relation of the cantons in the exercise of an international duty of the Confederation, the Federal Court pronounced as follows in a later decision:

If the Confederation binds itself by a State treaty to assume the support and care of ill and pauper foreigners until the return to their home State becomes possible, a relation of solidarity, a community of interests, is thereby established among the cantons from which rights and duties on the part of each of them flow, not only in their relations with foreign countries and the Confederation, but also in their relations with the other cantons. . . . The circumstance that the obligation entered upon with regard to foreign countries concerns all the cantons jointly, and in a similar way binds them to have regard for this obligation among themselves in the exercise of their sovereign rights, and not to use these rights in such a way that the burden assumed by virtue of a State treaty would be put upon another member of the Confederation. Certainly such regard is imperative in case the burden *in hypothesi* threatens to become actual *in thesi*, that is, in case foreigners are concerned who are likely soon to become in need of support (R. O. 43, I, p. 309/10).

The Federal Court has rendered the following individual decisions: The Canton of Solothurn placed in the hands of the police department of Basle a German woman with the request that she be deported to her homeland. In Basle it developed that the person in question was severely ill and not capable of transportation. She was taken to a hospital at the expense of the canton of Baselstadt, where she died after several weeks. The suit of Baselstadt against Solothurn for indemnification of the cost of maintenance and of burial was decided by the Federal Court in favor of the plaintiff. It was determined that the deported person was already incapable of transportation in Solothurn. Now it would have been the duty of Solothurn "to care for the maintenance of the needy German citizen so long as the said citizen could have been returned to her home without injury to her health" (R. O. 8, p. 443). But, whereas, the Canton of Solothurn did not fulfill the duties devolving upon it, and whereas, on the other hand, the Canton of Baselstadt, for its part, did so, therefore, the Canton of Solothurn was bound to repay the costs on the principle of implied agency. Said the Court: "In public law relations, the transaction of business under an implied agency must be recognized as a basis of origin of rights and obligations, analogous to the custom in private law" (R. O. 8, p. 443/4).

An analogous dispute between Zug and St. Gall was similarly decided by the Federal Court on September 28, 1905. In the decision it was stated "that in order to justify such a request for reimbursement of costs of maintenance and burial, proof of guilt on the part of the organs of the canton called upon in the first place to transact the business is not necessary, but that it is sufficient if it has been objectively proved that the canton (for instance, in accordance with regulation by State treaty) would have been responsible for the maintenance and eventually for the burial" (R. O. 31, I,

p. 408). If the liability of repayment follows from the principle of implied agency, it follows all the more if express agency is involved. Such an agency may, for instance, follow tacitly from an intercantonal agreement (R. O. 38, I, p. 112). The Canton of Schaffhausen had deported an Austrian woman who subsequently settled in the Canton of Zurich and was supported by it until she was transported back to her homeland, Austria. The suit of Zurich against Schaffhausen for repayment of the costs was decided in favor of the plaintiff. Although the necessity of support did not exist at the time of deportation, it could be foreseen that it would shortly ensue and this "should not have escaped the municipal police authorities if they had exercised conscientious care." Through the deportation they improperly threw upon Zurich a duty the fulfillment of which should have devolved upon Schaffhausen (R. O. 43, I, p. 312). Consequently, Schaffhausen was directed to reimburse Zurich for the costs which it had incurred.

In interpreting the Federal law of June 22, 1875, the Federal Court on February 27, 1913, in the case of *St. Gall v. Thurgau*, decided that a canton is obliged to support pauper citizens of another canton "if the illness (injury to health of any kind, especially injury as the result of an accident) had originated in its territory." It is sufficient if the person falling ill is accidentally present in the canton.

The legal duty of aid and maintenance is, therefore, intended to be linked merely with the fact of the illness, regardless of whether the person who has fallen ill has his legal residence in the canton in question—which is not his homeland—or whether he finds himself at the moment of falling ill only temporarily sojourning within its boundaries.

This interpretation, the court stated, follows from the humanitarian purpose of the law, which demands the immediate action of the authorities of the place in which the illness occurs (R. O. 39, I, p. 62).

In the consideration of the case of *Zurich v. Thurgau*, June 26, 1914, the Federal Court further developed the thoughts expressed in the decision of February 27, 1913, as follows: In the case of the duty to support needy persons it is a question, "not of a duty founded in international law or in Federal law, but of a duty which exists rather with regard to the modern State itself and arises immediately from the purpose of the State itself, namely the duty of protecting all persons finding themselves within its territory, without regard to their legal relation to it, in case of necessity, from physical destruction. And this duty can devolve only upon the State in which the person falls ill, and not upon the State in which he is domiciled." From these considerations the further deduction was drawn that "from the point of view of the duty of support in question, that place must be designated as the place of falling ill where the illness in question becomes recognizable in such a way that the action of the authorities is rendered a necessity conformable to their duty" (R. O. 40, I, p. 416/17).

In a dispute between Zurich and Tessin, decided by the Federal Court

on February 4, 1918, the question involved was as to which canton had to support a foreign woman who had become mentally deranged in Tessin and had been cared for in an insane asylum in the Canton of Zurich and became a charge upon public charity there after she had been maintained by a private person for four years. The Canton of Zurich was declared to be responsible for her maintenance, for "the circumstance which brings about the international duty of aid is not the act of falling ill, but the impoverishment, the destitution. It follows from this that when the illness and the destitution take place at different times, the place in which the illness occurred is not decisive upon the question of what canton is bound to aid, but rather the place where the destitution, the impoverishment appeared" (R. O. 44, I, p. 75).

5. JURIDICAL ASSISTANCE IN THE ADMINISTRATION OF CRIMINAL LAW AMONG THE CANTONS

A. Extradition

According to Article 67 of the Federal Constitution, Federal legislation makes necessary provisions for the extradition of accused persons from one canton to another; but extradition can not take place for political offenses or offenses committed through the press. The Federal extradition law of July 24, 1852, was adopted pursuant to this constitutional provision. It enumerates in Article 2 the particular offenses for which extradition will be granted and obligates each canton to provide for the arrest and extradition of persons who are being prosecuted for or have already been convicted of one of these offenses in another canton. However, the latter canton is entitled to refuse to extradite its citizens and persons domiciled upon its territory if it obligates itself to try and punish them according to its laws, or to execute the penalty already pronounced against such fugitives.⁹

The Federal Court has had opportunity in a considerable number of cases to interpret this law. As it did not adhere to a verbal interpretation of the law, but based its decisions upon general principles of international and federal law, they deserve to be discussed here.

(a) The Federal authorities have in constant practice maintained in the interpretation of the law of extradition

that, except in the case of voluntary submission to its jurisdiction, a canton is not entitled to institute criminal prosecution for any of the offenses pro-

⁹ At any rate, the Federal Law of 1852 applies only in so far as the enactment of penal laws is vested in the cantons. According to Article 150 of the Federal Law of March 22, 1893, concerning the administration of Federal laws, the authorities of a canton must lend legal assistance in criminal cases to be decided according to the *Confederate* laws, to the authorities of the other cantons, not only for examination, but also in the execution of sentences, in the same way as they are bound to lend such aid to the authorities of their own canton. (Salis, IV, No. 1689, 1710.)

vided in the said law against a person sojourning in the territory of another canton, in any other way than by first instituting the lawful procedure of extradition; that the canton is, therefore, not free, instead of requesting extradition, to institute proceedings for contempt of court or by temporary postponement of procedure to wait until the person in question enters its territory (R. O. 6, p. 210). (Ullmer, I, No. 281, 528/9, R. O. 3, p. 248; 6, p. 210, 217, 557; 14, p. 45, 181, 190; 21, p. 974, 982; 22, p. 968; 25, I, p. 446; 26, I, p. 202; 27, I, p. 48 f.; 29, I, p. 456; 30, I, p. 687.)

This practice, which is not expressly supported by the text of the law, was justified as follows in the decision of December 3, 1880: the interpretation of the law of 1852, in the sense "of the absolute liberty of a canton to institute contempt of court proceedings against an accused person who is a citizen of another canton or is established there would have for its effect, in most cases, to suspend indefinitely or even to render uncertain the prompt repression of offenses demanded in the interest of society and justice" (R. O. 6, p. 557).

The decision of March 28, 1901, justified the practice from another point of view: It is inherent in the nature of the Federal State that internal legal assistance be regulated between the cantons by the Confederation. This was done by the extradition law of 1852.

Now if this law for the rendering of intercantonal legal assistance has established the duty of the requested cantons to extradite in certain offenses, it follows from the nature of the Federal State as a closer community of States, that, on the other hand, the prosecuting canton should pursue its criminal prosecution for such offenses against a citizen or inhabitant of another canton not established within its domain with due consideration of the territorial sovereignty of the canton in which the fugitive resides. Just as the execution of the penalty can take place only with the coöperation of the latter canton (in so far as the fugitive is not in the domain of the prosecuting State, so too a regular summons is possible only with the coöperation of the canton in which the fugitive resides. Thereby the second principal thought underlying the law of extradition, namely, protection of the accused person, is realized. Therefore, the procedure in accordance with the law of extradition of 1852 is indeed obligatory in the case of offenses involving extradition, prior to the criminal prosecution (R. O. 27, I, p. 49/50).

The request for extradition must be addressed to the canton in whose power the fugitive is; hence not necessarily to the canton of residence (R. O. 37, I, p. 339).

The prosecuting canton is justified in arresting an accused person who is found in its territory, even if he has his regular residence in another canton. But arrest would be impermissible if the accused person had been induced to enter the territory of the prosecuting canton by unfair practices of its authorities with a view to evading the law of extradition (R. O. 42, I, p. 383; 3, p. 466). The arrest is also impermissible if a person residing

outside of the canton has been summoned as a witness and has appeared as such before cantonal authorities (Ullmer, I, No. 528; R. O. 3, p. 248; 12, p. 272).

If a canton refuses to extradite its citizens or persons residing in its territory, it is obliged itself to institute proceedings against them. The purpose of this obligation is not to condemn such persons but merely "to have them tried regularly by the judicial authorities of the canton and in accordance with its laws" (R. O. 41, I, p. 509).

The accused person may voluntarily submit to the criminal jurisdiction of the demanding canton, but the right of the canton in which the fugitive is found to examine the request for extradition with regard to its legal justification is not thereby prejudiced: "The government of a canton must be able to preserve its position in public law and the sovereign rights which are here involved, without regard to the conduct of the citizen who is primarily involved in the case and whose interests do not always necessarily coincide with those of the state (R. O. 25, I, p. 347, 447).

For crimes and offenses not enumerated in the law of 1852—that is, for which extradition may not be granted—a canton may prosecute the delinquent person residing outside its territory without instituting extradition proceedings, that is, the canton may, for example, resort to proceedings for contempt of court (R. O. 6, p. 76; 7, p. 719; 15, p. 112). But the canton may also make a request for extradition, and it lies entirely in the discretion of the requested canton whether to grant it or not (R. O. 5, p. 535; 8, p. 227). It is not necessary that the demanding canton act reciprocally (*Gegenrecht*) (R. O. 25, I, p. 19/20). A canton is also free to execute an extra-cantonal penal decision rendered in a crime not enumerated in the law of extradition.

In fact, the practice in Federal law has always tended to allow the granting of such legal assistance, in so far as no contrary regulations exist, depending upon the convenience of the cantons involved, the decision devolving upon the Governmental Council in case of doubt. . . . Only one condition must be observed, namely, that the offense in question must be one which is punishable also in the canton which is lending the legal assistance (R. O. 33, I, p. 151).¹⁰

It is clear that extradition from one canton to another usually takes place without the coöperation of the Federal Council. The home state of the fugitive, whether it be another canton or a foreign state, has no right of intervention (Ullmer, II, No. 1053).

(b) It is a preliminary requisite to extradition that the crime or offense for which extradition is asked be punishable both in the demanding and in

¹⁰ A canton is always free to execute public law decisions of other cantons upon its territory (R. O. 28, I, p. 142; 32, I, p. 645; 39, I, p. 615), while it is bound to execute decisions in civil law according to Article 61 of the Federal Constitution.

the requested canton. This principle is not contained in the law of 1852, but it is "admitted generally in the modern law of extradition as it has been developed since 1870." It also is conformable to the doctrine of international law and to most extradition treaties which Switzerland has negotiated with foreign states. Therefore, the principle holds, in accordance with Federal practices, in the practice of extradition between cantons (R. O. 41, I, p. 510; 27, I, p. 478). If the requested canton refuses to extradite because the offense is not punishable according to its laws, the demanding canton may institute the prosecution, and the law of extradition does not then apply. The Federal Court says on this subject:

If in such cases in which it seems certain that no penalty will be inflicted in the canton of refuge, the obligation to extradite should nevertheless be insisted upon, and if thus the canton of refuge, which would of course in that case use its discretion, should be compelled to institute criminal proceedings that would be hopeless *ab initio*, the penal claim of the prosecuting canton thereby would be exhausted and any further action would be excluded upon the principle *ne bis in idem*. The result of this would be that the contraventions committed upon the territory of the prosecuting canton would remain unpunished, in all cases in which they are committed by inhabitants of another canton whose criminal legislation is less fully developed. Particularly in police cases and in cases of contravention against regulations of the police concerning articles of food and provisions, this impossibility of execution of the pertinent legislation with respect to all such persons who are guilty of a contravention upon the territory in question, would have dangerous results, and the execution of the regulations pertaining thereto would be quite impossible if all dealers and purveyors residing outside of the canton and in places in which less rigid regulations are in force could evade punishment in this manner (R. O. 27, I, p. 478/79).¹¹

A mere difference in penalties in the demanding and requested cantons will not, of course, justify a refusal to extradite (R. O. 44, I, p. 179).

(c) The duty to extradite has been circumscribed by the Federal Court with regard to the *persons* to be extradited in the following way: A canton may extradite its own citizens to another canton. The principle of non-extradition of citizens is not a general Swiss principle, and therefore holds only in so far as it is expressly provided, or otherwise follows clearly from the general content of an intercanton agreement (R. O. 34, I, p. 293 f.; 36, I, p. 668 f.). Hence, the cantons may also bind themselves by treaties mutually to extradite their citizens (R. O. 36, I, p. 668).

According to Article 4, paragraph 2 of the law of 1852, the duty to extradite extends not to the principals in the crime, but also "accomplices," that is, the participants. The Federal Court has also proclaimed the duty of extradition with respect to abettors, primarily for the reason that it is in conformity with the nature of the Federal relation "to conceive the duty

¹¹ The arguments of the Federal Court in R. O. 41, I, p. 509, concerning criminal prosecution by the requested canton do not seem to be in contradiction to the opinion stated in the text.

of the component states to extend legal assistance in criminal matters in a liberal sense and, accordingly, not to limit the obligation of extradition *sensu stricto* to the participants in an extraditable crime, but to extend it to all accomplices in the broader sense of the term. This conforms also to the interest of the administration of justice which will regularly demand simultaneous execution and judgment of connected offenses (R. O. 6, p. 218/9).

The accomplices must be extradited even if they are citizens of the demanding canton (R. O. 3, p. 667; 34, I, p. 294). The idea of the joining of criminal proceedings is an old undisputed legal principle of the Confederation; even the right of the cantons to refuse extradition of their own citizens is secondary thereto.

A person prosecuted for a criminal offense must be extradited, even if he is serving a prison term in the requested canton, and extradition is necessary, or at least useful in the investigation in the demanding canton. The principles which are contained in treaties with foreign states can not be applied freely in this respect. "The duties of the cantons must rather, in this matter also, be regulated in conformity with the nature of the Federal state, and this nature conforms only with the principle that in criminal matters legal assistance is guaranteed in the fullest manner possible" (R. O. 5, p. 203 ff.).

(d) With regard to the facts which constitute an extraditable crime, the following principles have been developed in the practice of the Federal Court, which may be applied also to extradition under a treaty and should, therefore, be mentioned here.

It is not necessary that the cantonal penal law enumerate extraditable crimes under the same designation as the Federal law of 1852.

If investigation be made whether the facts of a given case qualify as facts constituting an extraditable offense in accordance with Article 2 of the said law, it must be examined in the first place what logical connection there is between the Federal law and the designations of crimes used in Article 2 of the said law, and it is not material whether a cantonal penal law classes in a different category of crimes facts which according to the sense of the Federal law are extraditable offenses in accordance with Article 2. The opposite interpretation would tend to allow cantonal laws to derogate from Federal law (R. O. 14, p. 191; 15, p. 112; 25, I, p. 347; 26, I, p. 203; 27, I, p. 477/8; 29, I, p. 457).

In order to determine what designation the Federal law intends to give to a definite class of crimes, the Federal Court examines the significance of this category in other Federal legislation, in the cantonal penal laws, in general law and in general criminal jurisprudence.

Extradition must be granted not only for accomplished crime, but also for attempted crime. Although this is not expressly stated in the law, the court says that it must be unhesitatingly assumed,

For, on the one hand, the designation of an offense embraces not only the accomplished crime, but also the attempted crime, and, on the other hand, the duty of extradition is frequently extended in extradition treaties with foreign states in a broader or narrower sense, also to attempted offenses of an extraditable nature . . . and there can be no doubt that in the relation of the cantons to each other the duty of extradition is not intended to be more limited than is the case with regard to foreign countries (R. O. 6, p. 209/10).

(e) The principle of the *specialty of extradition* holds also in inter-cantonal relations, but naturally not to a greater extent than in the relations of Switzerland with foreign countries. According to this, the accused person may be punished, not only for the act for which extradition is demanded and granted, but also for acts which are in "a closer relation" to that act, that is, for connected acts.

(f) In accordance with established practice, based upon positive regulations of Federal law, the accused person may make complaint before the Federal Court against the non-observance of extradition procedure. (Cf. R. O. 3, p. 249; also 25, I, p. 447; 32, I, p. 85; 41, I, p. 508). The complaint is directed against the prosecuting canton on the ground that before instituting a criminal prosecution it should have resorted to extradition proceedings. Such a complaint may be made at any stage of the criminal procedure (R. O. 14, p. 47; 27, I, p. 48; 29, I, p. 456; 30, I, p. 637; 42, I, p. 381). Nevertheless, the Federal Court refused to admit an appeal, because the appellants could not be regarded as "legally prosecuted," before the opportunity was had by the examining judges who, according to the law of Fribourg, were competent "to assign the true character to the offense" (R. O. 15, p. 116). But the prosecuted private person can not derive from the law of extradition any guarantee of having a certain court assigned for the trial of the offense charged against him. His right is limited to demanding the observance of the prescribed procedure; "that is, by refusing to recognize the extradition, he may require the canton requested therefor to render a decision in this matter; but he does not possess any right which materially affects this decision" (R. O. 32, I, p. 85). A third private person, for example, the injured person, has of course no right to demand that extradition be accorded (R. O. 6, p. 80; 9, p. 162; 41, I, p. 508).

B. Other legal assistance in criminal law

The Federal Court has determined that there exists among the cantons an obligation arising from "old Confederate practice" to accord legal assistance in inquiry proceedings and the execution of letters rogatory. This duty is prescribed by no law, but it has been developed by the Federal Court from the Federal law of February 2, 1872, amending the Law of Extradition, which provided that such actions of legal assistance be performed on the basis of comity. The obligation of according legal assistance is not limited to the crimes and offenses enumerated in the Extradition

Law of 1852. It exists also if the offense in question is not punishable in the demanding canton; "for in lending legal assistance, the application of the criminal law of the demanding canton, and not of the requested canton, is supported" (decision of February 10, 1886, in the case of Berne *v.* Schaffhausen) (R. O. 12, p. 49). In the decision of March 16, 1910, in the case of Solothurn *v.* Uri, this position was supported, principally for the following reasons:

The obligation of lending legal assistance has its internal basis in the solidarity of the States which cultivate the same system of law with regard to preventing crimes. The exceptions to the obligation of lending legal assistance are based upon the lack of confidence of one State in the justice of the administration of law in the other State. This exception is denied in theory, even in international law. But within a Federal State there should be no room for such lack of confidence, not even if the material and formal criminal law of the individual members does not always agree in content, as in the case of Switzerland. In this regard it must not be forgotten that the refusal of legal assistance cannot rescind the penal prosecution or make it ineffective; but the result of the investigation will suffer by such refusal, and it would be possible that because of defective examination, for instance, a person other than the one who is in reality guilty might be condemned (R. O. 36, I, p. 54).

For practical reasons, too, the court stated, a digression from the precedent established in 1886 was impossible, since the practice of most of the cantons has shaped itself accordingly. Furthermore, "with the growth of modern intercourse, the need of general legal assistance has become much more pressing than was the case at the time of the rendition of the aforementioned decision" (R. O. 36, I, p. 54/5).¹²

6. THE CONFLICT OF THE LAWS OF DIFFERENT CANTONS

A conflict of cantonal law takes place primarily when Swiss citizens reside in a canton other than their home canton. A dispute arose on the question as to whether the laws of the home canton or of the canton of residence are applicable in such cases. Thus, the first cases of double taxation arose from the fact that both cantons taxed such persons.

A. Double taxation

By double taxation is meant the simultaneous taxation of the same subject and of the same object by two cantons with the same taxes. The Federal Constitution of 1848 contained no prohibition against double tax-

¹² At all events, the question was left open whether, in view of Article 67 of the Federal Constitution (*vide supra*, p. 180), the obligation of lending legal assistance holds also for political and press offenses, as well as for offenses not committed within the demanding canton.

ation. Federal practice originally recognized the unlimited sovereignty of the cantons in the matter of taxation (Ullmer, I, No. 111, 114-117, 126-127). But in time, Federal practice declared double taxation to be inadmissible in Federal law for the reason that it is in contradiction to the principles of the freedom of domiciliation expressed in the Federal Constitution (Article 41), of equality before the law (Article 4), of the equality of citizens of one canton with the citizens of others (Article 48), etc. The principle that valid decisions in civil law which have been rendered in one canton may be executed throughout Switzerland (Article 49), was declared to be inapplicable to taxation cases (Ullmer, I, No. 128, 129-134). The right of the citizen, too, to make complaint because of double taxation has been recognized (Ullmer, I, No. 694).

The Federal Constitution of 1874 contained the following provision in Article 46, paragraph 2: "Federal legislation will make the necessary provisions against double taxation." Such a Federal law has up to the present not been adopted, but the Federal Court in an extraordinarily abundant practice has developed the principles against double taxation. This is not a suitable occasion to discuss them, not only because such a discussion would transcend the bounds of this treatise, but also because of the reasons explained at the outset (*vide supra*, p. 153). Some of the more important principles have already been mentioned.¹³

B. Further cases

Finally, the decisions of the Federal Court will now be mentioned which have been rendered in public law disputes between cantons and which deal with the intercantonal delimitation of jurisdiction in the field of guardianship and inheritance.

According to Article 46 of the Federal Constitution, a Federal law is to regulate the legal relations of domiciled persons in such a way that usually they will be subject to the law and the legislation of their place of domicile. Prior to the adoption of this law, which did not take place until June 25, 1891, the cantons were unrestricted in this matter, and the Federal Court frequently determined that each canton, by virtue of its sovereignty, has the right to apply its own legislation with regard to persons domiciled in its territory. In accordance therewith it was decided that each canton is empowered in Federal law

to subject the citizens of other cantons residing in its territory, their persons and their property, to its legislation and jurisdiction in matters of guardianship; but that the home canton is not prevented from applying to its citizens its legislation with regard to guardianship, at least in so far as its territorial sovereignty extends, that is, with respect to the property situated in its territory (R. O. 11, p. 19; 3, pp. 29, 33; 5, p. 426; 8, p. 728; 13, p. 398; 15, p. 697).

¹³ There is a discussion of this practice in Bueckhardt, *Kommentar*, p. 419 et seq.

A suit of the Canton of Schwyz to the effect that the Canton of Zurich be compelled to refuse domiciliation to a national of the Canton of Schwyz who was under guardianship, was rejected by the Federal Court on October 21, 1909. Article 45 of the Federal Constitution empowers the cantons in certain cases to refuse domiciliation to persons who are not citizens of the canton.

If it pleases a canton, by virtue of its sovereignty, to grant permission for domiciliation or sojourn, even in a case in which according to Article 45 of the Federal Constitution it would be justified in a refusal thereof, no other canton has the right to protest this action (R. O. 35, I, p. 666).

At any rate, a canton in which a person under guardianship is sojourning without the permission of his guardian or competent court for the protection of wards, may under circumstances be obligated "to grant the necessary legal assistance for the execution of decrees of an extra-cantonal court for the protection of wards" (p. 666/7). Before the adoption of the law of execution of Article 46 of the Federal Constitution, the simple principle of territoriality obtained also with regard to the law to be applied in cases of inheritance. In practice the principle had been established that

in default of special contractual limitations, each canton is authorized, by virtue of its sovereignty, with regard to things located in its territory, whether they figure as individual objects or as component parts of an inheritance, to apply its legislation and jurisdiction, and that, therefore, in so far as an inheritance is located in different cantons and a conflict really exists between the different cantonal laws, the courts of each canton are in Federal law competent to decide disputes arising in matters of inheritance, in so far as the inheritance is located in the territory of the canton in question.

This principle, the court stated, follows from the fact

that according to Article 3 of the Federal Constitution, the cantons, in so far as they are not restricted by Federal law, are sovereign in their territory and may, therefore, not be hindered in applying the principles of their legislation in the local law to be used, and the courts are competent in disputes concerning inheritance, so far as their territorial sovereignty extends and in so far as they do not thereby interfere with the sovereignty of another canton. But it must not be forgotten that, in case of conflict of several systems of cantonal law, the unity of the inheritance is sacrificed and important practical disadvantages arise. However, the Federal Court must, in so far as conflicts arising from the divergency of the cantonal systems of law are not positively decided by the Constitution and the legislation of the Confederation, simply follow the principle that in case of such a conflict each canton is authorized to apply the principles established by its legislation, as far as its territorial sovereignty extends, and it is not authorized, for the purpose of solving such intercantonal conflicts, to establish and apply independent positive rules, limiting the exercise of cantonal territorial sovereignty (R. O. 7, p. 468/9).

THE NATURE OF AMERICAN TERRITORIAL EXPANSION

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America has been commonly portrayed by American statesmen and politicians, even in fervid Independence Day orations, as a nation whose policy is ever for peace, and as a nation harboring no imperialistic aims. A certain group of thinkers—or feelers—have boasted of the extreme pacifism and righteousness of America in this way in order to intensify and reënforce and promote those policies for the future. These good people have hoped to see America lead the way to a repudiation of militaristic methods and the gospel of conquest. Such are the pacifists, the church people, the reformers. A second group of people have firmly believed that, in actual fact, the record compelled and imposed on them such an interpretation of American policy. They have felt that the causes were only in part the voluntary preferences of the American people, and they have seen the importance to be attached, in interpreting the American policy, to the geographical and economic conditions determining the character of American growth and policies. But to whatever cause it has been due, and largely because it can be traced back to a deeper and firmer foundation and source than mere popular preferences, these students of American foreign policy have subscribed, and still subscribe, to the belief that the American practice in the matter of territorial expansion has been characterized by a lack of imperialism, of militarism, and of a lust for conquest such as has been manifested by certain European Powers from time to time in the past. Their opinion is entitled to respect. It is, moreover, useful, even indispensable, to have an accurate idea of the quality of American foreign policy in the coming days in order not, certainly, to expect too much of America, and also, just as certainly, to be able to utilize all the potential energy for good in international politics which America may be able to provide.

The transports and boastings, and what have amounted to the spiritual excesses of those who have painted America as a pacifist and a saint among nations, have produced in certain quarters a feeling of revolt and a reaction against the traditional view of the matter. In certain cases the result is a mild, amused, somewhat cynical, somewhat wise and sophisticated skepticism as to the peaceable and righteous character of the American mood. In other cases the result is a flat denial of the American tradition, a

direct contradiction of its conclusions, and an attempt to place America on all fours with the other members of the family of nations on the score of territorial expansion.

Of the first sort is the case of Professor J. B. Moore, who, after taking note of the traditional pictures of American policy "as conventionalized in the annual messages of Presidents to Congress," and, he might have added, in countless public documents and private addresses, goes on to say, in his treatment of the principles of American foreign policy: "Nevertheless, in spite of their quiet propensities, it has fallen to their lot, since they forcibly achieved their independence, to have had, prior to that whose existence was declared April 6, 1917, four foreign wars, three general and one limited, and the greatest civil war in history, and to have acquired a territorial domain almost five times as great as the respectable endowment with which they began their national career." This gently implies, of course, that the conventional picture is inaccurate, at least in its emphasis or intensity.

Further still to the left we have Mr. J. A. R. Marriott, who, in a recent article in the *Edinburgh Review*, concludes that "the American record of expansion does not fall behind that of the principal European Powers," and that, in the words of Professor Ramsey Muir, who is quoted with approval by Mr. Marriott, "the imperialist spirit was working as powerfully in the communities of the New World as in the monarchies of Europe."

The method of approach and the objectives of Mr. Marriott's treatment must be borne in mind. He begins by deploring that "illusions about America die hard," and that "as a rule it takes longer to kill them" in Europe than at home. He then sets out to do the killing. After following the argument for some distance in a more or less systematic way, the author begins to reorient his treatment. He is no longer interested in killing an illusion, but in portraying what appears to him now, after his review of the Monroe Doctrine, as a "new departure in American diplomacy." He concludes that America came out of her isolation in 1895 or 1898 and began to take part in world politics. What is now felt by Mr. Marriott to be a new policy of participation in *Welt-politik* is portrayed as a reversal of the preceding policy. "The *Zeit-Geist* had proved itself too strong even for the Americans. . . . During the last generation the world has become one in a sense of which no one dreamed forty years ago . . . the world has shrunk; and in the process of contraction, the American, Australian, and African continents have been inevitably drawn into the maelstrom of European politics."

Thus, in addition to the initial motive of killing an illusion in the interests of truth, Mr. Marriott is in the end simply playing a new variation upon the now familiar theme of the growing contact and inter-relation of the nations. Indeed, the latter idea bids fair to become as stereotyped

in a few years as the tradition of American isolation and pacifism ever was. Moreover, his second thesis involves somewhat of a denial of his first. If America is on all fours with the European Powers only after abandoning a policy of isolation which she is reputed to have pursued down to 1895-98, then during the preceding period she must have lived a secluded and, presumably, virtuous life. If she became worldly in 1895-98, she must have been unworldly before that time.

However, the important question about all this is, of course, is it true? The first thesis of Mr. Marriott might look suspiciously like the sinner's retort, "Oh, you are just like the rest of us." It might look like the attempt to drag the pictures of America down to the level of that of imperialist and militarist Europe. There is probably to be detected here, however, a certain measure of influence from the second of Mr. Marriott's propositions. We are *all* in the same game, he says, at least since 1895; after all, haven't we *always* been pretty much alike, you *were* always pretty much like us, you know. In either case the question remains: were we? Is it true?

It must be remembered that the point is that of international imperialism. The United States is not accused of being rebellious or turbulent, in the sense in which that accusation is levelled at Latin-American republics. The territorial expansion of the United States and their share in imperial world politics is what is in question. Accordingly, Professor Moore's mention of "the greatest civil war in history," and of the fact that the United States "forcibly achieved their independence," is simply beside the point and has nothing to do with the case.

For the rest, the charge may be put thus: the United States has been engaged in numerous wars and has expanded enormously in territorial possessions; on these critical points of international relations and foreign policy America is not exceptionally righteous by intention, nor has she an exceptionally good record.

On the first point, no perplexity whatever need be felt. The history of American military organization and the record of her wars need only be reviewed to show that Professor Moore's insinuations are wholly without consequence. To begin with, the United States has always been content with, and has positively rejoiced in, a standing army small even for a much smaller Power, and in the use of the volunteer and militia systems of military organization. That is notorious. It does not create a picture of a nation with military propensities and predilections. In the military life Americans are amateurs—sometimes ridiculous, sometimes glorious, but always amateurs.

When we come to examine the numerous wars in which the United States has been engaged, "three general and one limited," a new sort of error is revealed. The United States has been involved in the wars against the Barbary pirate states in 1795-1815, in the wars of England and France

in 1798 and 1812, in a war upon Mexico in 1846, a war upon Spain in 1898, and in the general European war in 1917. To make such a statement, however, is to open a discussion, not to close it; is to speak merely in quantitative terms. It remains to be noted, first, that the wars against the Barbary States were waged in behalf of a sea free for all nations from these subsidized marauders of the Mediterranean; second, that the *de facto* war with France was entirely maritime in character, was extremely brief—a matter of six months—and, like the following war of 1812 (also brief and fragmentary), followed not from relations arising directly or primarily between the United States and another peaceful nation, but from relations between the United States as a neutral and one of two parties to a bitter European struggle during which the neutral was put to it to defend his rights and to resist encroachments from one side or the other. Like the War of 1812, also, it originated in part from a determination to defend maritime liberties upon which the next few years were to place the seal of approval. These two wars contrast strongly with the Mexican War, which was offensive and not defensive, which was predatory in its aim, and was not undertaken primarily for the defense or vindication of legal rights.

It is precisely this Mexican War which, as the glaring exception, proves the general rule regarding the character of American wars. Mr. Marriott does not dwell upon the disgraceful character of that war as fully as he might be pardoned for doing if he chose. He does, however, make a remark in regard to it which is interesting and instructive. The Civil War, it appears, "might never have occurred had the United States been strictly limited to its original territory." Evidently, in Mr. Marriott's eyes, the Mexican War contributed to push the South into the Civil War. On the other hand, as Mr. Marriott does not mention, it was the South that pushed the nation into the Mexican War to secure more potentially slave territory in Texas and the Southwest. That war, it is safe to say, probably would not have occurred but for the operation of what must be regarded as an abnormal and unnatural factor in American politics. It is not characteristic of American foreign policy.

One does not need to go up into the wars of 1898 and 1917 to discover the same traits. Let history judge whether the United States entered either of her most recent wars from a lust of conquest, military ardor or imperialistic desires. Rather it can be affirmed that the United States, when her policy has been determined by the natural and normal preferences of her people, has never entered a war except in defense of legal or ethical rights to which history has, as a matter of actual recorded fact, paid definite and profound respect. So with her defense of the freedom of the seas against France and Britain in 1798 and 1812, her defense of Cuban liberty and decency and her own safety in 1898, and of her freedom upon the seas again in 1917. Let Mr. Marriott compare the war aims of America in the

recent war with those of any of the other belligerents and then answer whether American participation in that war proved her to be imperialistic, as nations go in this year of grace, or otherwise:

The discussion of war aims, however, leads us over to our principal problem, namely, the character of the territorial expansion of the United States. Referring again to the Cuban case, did America undertake the War of 1898 for conquest? Or, more generally, what qualities are manifest in the territorial expansion of the United States from a petty coastal state in 1776 to a vast world Power in 1920?

Of the facts in the case there can be no doubt. Beginning with the possession of the Atlantic coast from Florida to Maine, the Americans have expanded westward to the Mississippi, to the Rockies, to the Pacific, and acquired vast possessions in Alaska, the East and West Indies and the islands of the Pacific. By a constant process of expansion and acquisition extending from 1783 to 1916 "the American empire" has grown in area and in distribution over the surface of the globe until we stand among those spacious and far-flung Powers upon whose possessions the sun never sets.

Here also, however, the impression which Professor Moore and, to a greater extent in this case, Mr. Marriott try to create is due wholly to the fact that they dwell upon the quantitative aspects of the case alone. Thus, Mr. Marriott says that "No country in the world exhibited, during the nineteenth century, a more marked tendency to territorial expansion than the United States." He notes further that in 1845 America annexed "a territory more than four times as large as England and Wales," and that in less than a century after 1783 the United States had "more than quadrupled in size."

Now all of these quantitative statements are true. But they do not mean much. Imperialism is not a matter of area, any more than militarism is a matter of the number of wars in which a nation has been engaged or, for that matter, of the number of troops maintained in the armed forces of the nation. China is larger than continental United States, Greenland larger than all of western Europe. What does that prove regarding the Danes or the Chinese? Nothing, just nothing. Imperialism and militarism are moral—or immoral—characteristics to be measured with more discriminating instruments than a yardstick or a counting machine. The area of Brazil and the military preparedness of Switzerland do not convict either of these nations in the public mind of those two vices, and properly so.

There have been, in the United States, certain manifestations of what might be called an imperialistic temper. These were in evidence specially from 1840 to 1850, the decade of the "roaring forties," as these years have been aptly called. The cry of "Fifty-four Forty or Fight," which was raised to express the demand, put forward in the Presidential campaign of

1844, for possession of the Oregon territory up to 54° 40' North latitude, and the talk about the "manifest destiny" of America to rule this continent from the Northern ice to the tropic seas, and so on, were symptomatic of a certain mood. The spectacle of westward expansion and settlement fired men's minds and loosed their tongues. Our Latin American neighbors, or certain more or less excitable politicians in and among them, dwell lovingly upon the war of this period as proof of an imperialistic plan to conquer the western world, combining this evidence with the more recent expansion of American finance and commerce in these continents and the policy of the Monroe Doctrine, with which all of this is connected in popular talk. In the end of the century came an outburst of enthusiasm for a place among the world Powers and a share in the colonial game.

There have been other episodes which might be called on to prove American imperialism. In 1778 we treated with France regarding a joint conquest of all British possessions in America. The Articles of Confederation showed clearly a hope for the inclusion of Canada in the new nation. This subject was revived in 1870 in discussions of British relations. Cuba was coveted by Adams and by Jefferson in 1823; in 1848 we tried to buy it; in 1868 we meditated military occupation. We tried to secure the annexation of San Domingo in 1879. Various other cases could be cited.

The fact is, however, that a decision must be reached not by reference to what did not happen, but by what did happen, not by vague and unsupported aspirations or desires, but upon decision converted or attempted to be converted into action or stopped only by outside forces. Further, the character of American policy must be judged by the long run of events, not by the sporadic outbursts of 1846 and 1898. That the moods of 1846 and 1898, engendered largely by the events themselves, are so easily recognized, indeed, is due to the fact that they are set against a background of pre-vaillingly different hue.

When we come to examine the concrete acquisitions of territory actually made by the United States, there are certain very definite considerations which sustain these general impressions. These are to be found in the manner in which these acquisitions were made, the character of the territories at the time when they were acquired, and the method of treatment accorded to them after acquisition.

Most of the territorial acquisitions of the United States have resulted, not from the use of armed force, but by free cession. That is the one great and irrefutable disproof of American imperialism. The lands between the Appalachians and the Mississippi were held in at least a legal title in 1783 and possession was taken by the natural and peaceful process of settlement. Louisiana, Florida, Alaska, and the Virgin Islands were purchased; Texas and the Hawaiian Islands annexed upon their own request; the Oregon territory acquired by discovery and settlement and free diplomatic arrangement with Britain. Even in the case of Florida, where preliminary

events gave every opportunity for a quick and outright conquest, the territory was only taken after a fair conventional agreement with Spain. It is particularly ridiculous to hear Mr. Marriott declare that "the purchase of the Alaskan territory in 1867 from Russia was a more obvious demonstration of an imperialistic temper." Besides being a rather happy and, in the public mind at the time, unforeseen and dubious accident, it was sold by Russia at such a price as to indicate that the United States was picking up something without very serious effort on her part. The Congress very nearly refused outright to appropriate the money for the purchase at all. There was no general national imperialism whatever in evidence. Finally, various islands have been acquired by discovery and occupation. In none of these cases are there any substantial qualifications to be made. This is the normal mode of acquisition for the United States.

The events of 1846 and 1898 are exceptions or partial exceptions here as above. New Mexico and California were taken primarily by conquest. The abnormal cause for that action is notorious, and has already been mentioned. It remains to be noted that steps were already on foot in 1846 to purchase these territories from Mexico, according to the usual practice of the United States. From the standpoint of the true American policy, one can but regret that the South did not give time for the normal methods to be followed. An American does, however, regret it, and not boast of it.

As for Cuba, Porto Rico, and the Philippines, the case is slightly different again. Cuba, of course, was not annexed by the United States, but simply freed from Spain. The Philippines were taken by a combined process of conquest and purchase. Porto Rico and Guam were taken by conquest, apparently. So much for the initial steps. In regard to all of these, however, the most significant facts are those connected with the method of treatment accorded to the annexed territories. To that we shall return in a moment.

The next thing to be noted is that the great bulk of the territorial acquisitions of the United States have been made from contiguous territory. The frontier of settlement has grown outward by a natural process. In some cases, defense of the existing frontier was a motive; in some cases boundary disputes—real, and not artificially stimulated—led to territorial acquisitions. Florida, the trans-Appalachian regions, Louisiana, Oregon, California, and even the Southwest were reached in this manner, not by overseas adventures or incursions into the settled or occupied territories of other nations.

In other words, the American people moved slowly and peaceably into what were nearly empty territories. The lands settled were not already occupied by a population with a developed culture and life of their own. No great numbers of an alien people were subjected to a conqueror's government. The Indians cannot be so described. They were not entitled, by any sort of social ethic which can be seriously considered, to be respected in their

occupation of the land as if they had been a civilized people. They could not be cited here in such a manner. By and large, the Americans have simply flowed into empty territory; they have not conquered and annexed existing states or portions thereof.

The same exceptions are to be noted here as in the discussion of the manner of acquisition. The Philippines and Porto Rico and the Pacific islands, and even Alaska, lie away from the mainland of the United States. And while Alaska and the Pacific islands were largely empty or inhabited only by uncivilized natives, Porto Rico and the Philippines were settled countries and so was the Hawaiian group. In this case the Southwest stands better than they, for it was both contiguous and sparsely occupied, and held in the vague Mexican Empire rather lightly and artificially.

But the decisive fact, after the method of acquisition itself, is the method by which the acquired territories have been treated. In this the Philippines and Porto Rico and the Hawaiian group fare well. The characteristic American practice has been to incorporate acquired territories in the Union on a basis of equality with the original member States, and not to hold them in subjection as colonial possessions. This process was applied to all the acquisitions down to 1898. Even Alaska, remote and unsettled, is on the recognized historic route to statehood.

In the cases of the acquisitions of 1898 that practice has also been followed. Hawaii and Porto Rico have been given "territorial" governments, which have always been the prelude to statehood, and they may conceivably achieve statehood in the not distant future. The Philippines have been given "territorial" government and might conceivably follow the same path. What is more likely to happen, however, and the distinction has its own significance, is that the Philippines will go one way—to independence, while Porto Rico and Hawaii, perhaps, go the other—to statehood. We have promised the Philippines their independence, acting apparently on the assumption that they could not become part of the Union. They may be retained in a protectorate; they may come to stand with Cuba, as another relinquished conquest. In either case, the protectorate would gain its significance not so much in distinction from a theoretical or potential stage of complete independence as from the immediately preceding stage of conquest and dominion.

From all of these facts, the conclusion is unescapable. They are not vague and indefinite ideas; they are historic facts. They are irrefragible obstacles to any attempt to portray American territorial expansion as a process of imperialism.

From one point of view the task of refuting such an attempt may appear to be too easy to have deserved to take up so much time and energy. And in a sense that is true. No person who is familiar with American political life can take such a contention seriously. The people of the United States have not the imperialistic temper. Except when on a sort of spirit-

ual spree as in 1846 and 1898, they are frankly embarrassed at such a grandiose rôle in international politics. Have they not always played, or pretended to play, a minor rôle in that tragi-comedy, even a silent rôle? They have thrilled at the idea of "conquering" and "subduing" a continent—in the sense of exploring, settling and cultivating the earth; in that sort of imperialism against nature they have gloried. The extension of the empire of man over brute nature—that is American imperialism. As for the hard and greedy international imperialism of military conquest, for that they have neither the requisite stage presence in international relations, nor the necessary viciousness.

ENEMY GOODS AND HOUSE OF TRADE

BY THOMAS BATY, LL.D., D.C.L.

I. GENERAL

It is proposed to examine shortly, in the following pages, the precise extent to which a neutral's commerce with a belligerent country is liable to interruption by the cruisers of the opposite belligerent, apart from the traditional doctrines of blockade and contraband, and from the practice of reprisals. We shall also eliminate the operation of the dogma of continuous voyage. Needless to say, that dogma is one which introduces utter uncertainty into the realm of prize law, and makes it easy for belligerents to behave towards neutral commerce in a quite arbitrary fashion. When combined with a swollen list of contraband, its application amounts to a complete control of commerce by belligerents; and might best be met by a friendly war being commenced between neutrals, who might thus, perhaps, regain the freedom of which they otherwise stand deprived. But taking the dogma as it stands, we cannot but realize that its true design and justification is to restore to belligerents their old liberty of seizing enemy property withdrawn from them in 1856 by the Declaration of Paris. That, and not the pernicious influence of railways, is its true *raison d'être*. When Chief Justice Chase, by his casting vote in the United States Supreme Court, lauded the doctrine during the American Civil War, it was with no idea of countering the influence of railways in his mind. Railways were not important in that connection. No railway, at that time, traversed the waters of the Gulf of Mexico. Nassau was on an island. Any influence that railways may have exercised, in making a belligerent territory more accessible from neutral ports, is more than offset by the enormous power of controlling commerce exercised by the modern fast cruiser—a power incomparably greater than that of the old frigate over the old merchantman.¹

Accordingly, if the continuous voyage dogma be duly anathematized in the interest of a modicum of decent security for neutrals, it will scarcely be possible to avoid the substitution, in some form or another, of liberty to intercept the enemy's goods laden on neutral ships. The neutral in that case will preserve his ship, will even get his freight, and no harm will be done to anybody except the enemy,—a much more satisfactory state of affairs than the present, when by a forced and unnatural series of

¹ See, for succinct statistics, the writer's *Prize Law and Continuous Voyage* (London), 1916.

fictions, innocent cargoes are treated as contraband, and are held to involve forfeiture of ship and freight,—a virtual return to the brutal old doctrine of *la robe ennemie confisque le vaisseau ami*. In that event, the question of whether particular goods are really intended for, or are coming from, a particular enemy must always be important. The question we shall examine, therefore, is the position of the importer and exporter in the enemy country. When is he an enemy?

Putting aside the test of political nationality as of doubtful admissibility,² it may, I think, be taken as demonstrated that the test of domicile intends merely the domicile of ordinary private law. The same considerations as are decisive in private law cases were adverted to by Scott as decisive in the leading cases of *The Harmony* and *The Indian Chief*. Prize decisions and divorce and testamentary decisions are quoted indiscriminately in prize and municipal cases. Prize domicile is simply civil law domicile. It is adopted as a test, because a person's settled residence is where he normally spends, and may be expected to spend, his money. As Scott explained in *The Harmony* (2 C. Rob. 325), it is there that his net resources may be drawn on for the prosecution of the war.

His "house of trade," on the other hand, is where he makes his money. To attack it is, in part, analogous to taxation of income at the source. It is really a mode of attacking the numerous small incomes of the small people whom he employs. Their domiciles are where they work; and their employer's "house of trade" embraces them all. Also it attacks the advantage which accrues to the population through the operations of the house of trade, which enables them to exchange their superfluities for more needed commodities.

The idea that "prize domicile" is something different from "civil law domicile," and means "trading residence" is, as I have elsewhere shown, perfectly irreconcilable with the cases and, moreover, attributes a singular imbecility to the courts. Since every trading residence of a kind calculated to attract the imputation of enemy character involves the setting up of a house of trade, the introduction of the test of domicile, if domicile means trading residence, would be entirely superfluous. "House of trade" would be a sufficient conception to include all cases.

For the demonstration of the principle that domicile is not, in the eye of prize law, a kind of watery "house of trade" in which personal residence supplies the want of substantial business apparatus, the reader is referred to the (Edinburgh) *Juridical Review* (October, 1909, page 209), and to the *Journal of the Society of Comparative Legislation*, IX, 157; X, 183 (a discussion between Professor Westlake and the present writer).

² In Anglo-American law, that is. In most other systems, it is the decisive test. There seems no *decisive* case or authority against its being recognized in Anglo-American law as an additional criterion of enemy character, though the better opinion is to the contrary. See *War and Its Legal Results* (Baty and Morgan), pp. 306, 310.

We shall now assume that the criteria of enemy character are two: (1) civil law domicile, and (2) the possession of a house of trade; that is to say, the carrying on of a course of trading, whether in one's own office of bricks and mortar or not, in the enemy's country. We shall not forget that (3) political nationality may perhaps turn out to be another criterion, and (4) the minor fact that the raw produce of the enemy's soil is (at any rate until resold) of enemy character. And we now set ourselves to inquire in detail, as the really central inquiry, what is the possession of a house of trade, referring readers, who may be uncertain as to the true meaning of domicile as a term of prize law, to the articles just cited and to our incidental discussion of the point when dealing with the authorities later.

II. HOUSE OF TRADE

The more one looks at this question, the more elusive and baffling it becomes. Nobody takes or sends goods to a given country to dump them on the rocks. Few take goods to a given country to enjoy and consume them there. The purpose of import is, in general, sale, and if every one who sends goods or has goods sent to himself or his agents in a belligerent country, intending to sell them, has *ipso facto* "a house of trade" in belligerent territory, it is difficult to see how it can ever be practically possible for a merchant to send goods as his own neutral property to a belligerent territory at all. If they are to be commercially dealt with, it must be by or on behalf of their owner himself, unless his duties are confined to the mere delivery to a previously ascertained purchaser. General export to the belligerent territory of goods to be marketed there would be impossible. The marketing would be the carrying on of a "house of trade." But *The Anna Catharina* (4 C. Rob. 119) shows distinctly that a neutral can export for a market and deal commercially with the goods in the enemy's territory without having a "house of trade" there. But then it becomes difficult, indeed, to say what he may not do. We cannot say that he can only make such imports and sales casually: he may carry on a permanent course of dealing. As Dexter puts it in *The San José Indiano* (2 Gall. 277): "Though it be true, that a neutral may carry on commerce, in time of war, with our enemy's country, yet he cannot carry it on in that country."

PERSONAL PRESENCE. Nor does there seem to be any reason why the mere fact that the principal or one partner is locally in the enemy country, or is not only there, but actively engaged in the business there, should make any difference.³ Sir Cræsus Midas is the proprietor of a business which has come down to him from his grandfather, Sir Georgius Midas. He spends all of his time at Monte Carlo and the business is managed by a head clerk in London. It would not make it any the more an English business if Sir Cræsus lived in the Isle of Wight; or if he attended daily

³ See *The Jonge Klassina*, 5 C. Rob. 297, and our comments, *infra*.

at the office in Mincing Lane. Of course, if he is domiciled there, it is different. In that case a new and independent ground of confiscation would arise—but we have ruled out domicile for the present. We are speaking of carrying on a house of trade. But this example puts us, perhaps, on the track of the elusive basic ideas: the brain and nerves of the business, in the instance supposed, are in England. Suppose Sir Cræsus began personally to cable his instructions from the south of France, or to assemble around him a little cabinet of central control there; then it might begin to seem less like an English, and more like a French, business.

AGENCY. Certainly it is not the apparatus of clerks and managers which makes the "house." But, on the other hand, it is not the chief directing mind which necessarily makes it. A mere agent, liable at any time to dismissal and control, may quite possibly constitute a nucleus of business, making his dispatch amount to the establishment by his principal of a house of trade in the country to which he is sent. Nor is the greater or less initiative which is left to him apparently decisive, though it must be important. The great test in Stowell's mind, as in Story's, appears to have been the *general*⁴ or *specific* nature of the business. If an agent is sent abroad to do general business, then you have probably established a house of trade in the country where he has his center. Presence of the principal or uncontrolled manager⁵ is by no means essential.

But then the great difficulty arises,—is not the general business, so carried on, just a part of the one and indivisible business of the neutral house? Stowell never quite grappled with this difficulty. But he did indicate in *The Jonge Klassina* that if it had not been for the recurrent personal intervention of the proprietor, present on the spot, the trade done by an agent stationed in the enemy country might conceivably have been regarded as not being enemy trade—general in its nature as it was. And in Portalis' case (in *The Jonge Klassina*, 5 C. Rob. 303) a mere agency established in the enemy's country, of a substantial neutral business, was held not to be an enemy house of trade, though apparently doing general business with full initiative.⁶ These are stubborn facts, which prevent us from laying down any real principle that it makes one *pro tanto* an enemy to carry on a general business in the enemy country. It remains true that the business thus carried on is only part of the proprietor's whole business activity, which may be centered overwhelmingly in a neutral territory.

⁴ General as regards customers and transactions, that is; not as regards lines of goods.

⁵ By this term we shall denote a chief business executive who is technically an agent or servant, but whose principal has no business activities of the class concerned.

⁶ This can only be surmised. But the surmise is a strong one, as, if the agent had been at all devoid of initiative, the case would hardly have been worth pressing Stowell with, or worth his attention in giving judgment. Nor would such an hypothesis have been in accordance with the circumstances of the time or the exigencies of international commerce.

It is useless to deny, however, that the slipshod aversion from clear thought, which is characteristic of the average civilized human being, has caused a strong tendency to regard those agencies, which are termed loosely "branches," as independent entities. Thus one bright genius in the City of London devised, some years ago, the idea of a "branch" of a bank drawing a check on another "branch," of the same bank; *i.e.*, of the banker asking himself to be so good as to pay himself or a third person. The courts tore the notion to pieces, but legislation was required to effect a compromise with the hazy ideas of the average citizen. And in the recent hostilities, a similar consideration lay at the root of the British qualified⁷ exclusion of "houses" or "branches" established in the countries by British or German firms from the terms of the proclamation of August 5, 1914, against "trading with the enemy"; and of the official Treasury statement (August 21, 1914) that trade with a neutral or British "branch" of a hostile firm was permissible, so long as "no transaction with the head office" was involved. Since a branch is an agent, if anything, it is obvious that transactions with the branch, *qua* branch, must inevitably, in law, be transactions with the head office. A transaction with an agent, as such, must be a transaction with his principal. It is doubtful if the Treasury quite knew what they meant themselves; but as they cannot have intended a nugatory statement, they appear by "transactions" to have meant transactions which ordinarily would not be reported to the head office, but would only affect the net financial account of the working of the "branch." In other words, the branch is envisaged as an independent entity which has an independent balance-sheet and an independent profit or loss.

Is this a characteristic of all "branches" or "agent-houses"? One would be slow to believe it to be necessarily such. The business due to the existence of the branch may never be done directly through its agency: it may be established to collect orders only, or to keep the products of the business before the local public. There seems to be no reason for treating such houses or branches as neutral or allied, when the principal house by which they are established is carried on in the enemy country. And the mere fact of a separate balance-sheet being struck cannot make any difference. A business is not a juridical monstrosity, whose limbs can be lopped off so as to become separate entities at will; nor does its mode of internal organization or of account affect the crucial point of substance, *viz.*,—that its "branches" are merely modes of its own activity, their gains its gains, and their losses its losses. Probably behind the British proclamations was a lurking recollection that "trading with the enemy" properly means the transmission of money or goods to or from the enemy's territory—and on that footing, the exemption of agents acting in one's own territory for

⁷ Banking houses were not fully exempted. Proclamation of January, 1915.

enemy firms or persons is perfectly natural and proper. Unfortunately, "trading with the enemy" was not confined to this, its traditional meaning.⁸

This is a momentary digression, however. We are not concerned with trade between belligerents, but with the trade of a neutral with one belligerent, and not with municipal regulations, but (mercifully) with the law of nations, which is common sense. Import and sale, produce and export, are competent to neutrals in a belligerent country, whether we call them a "house" or not. If they have nothing that can be styled a "house" elsewhere, then it will be very difficult to avoid saying that they have a "house" in the belligerent country. In fact, the word "house" is ambiguous. Sometimes it means a partnership, sometimes an agency. A business man may speak of "our Melbourne house," or of "our Hong Kong house"—meaning really "our agency," but the Melbourne or Hong Kong employees will refer to themselves as part of the one and undivided "house" of Aitken, Holloway & Douglas, let us say, of Liverpool. In more than one case, we find the court speaking of a house having a house.⁹

Still, it does not follow that, because an establishment in an enemy country is merely an agency for a principal business established in a neutral country, it *cannot* be an enemy "house of trade." If A, trading in Utopia, sends an agent, or a hundred agents, to Barataria for the better performance of his business, he does not necessarily start a Baratarian house of trade. If he sends an agent to Barataria to establish a new line of business, entirely unconnected with his own, he, equally clearly, does set up a house of trade in Barataria, but the line between the two is difficult even to sketch in the faintest degree.

THE TRUE LIMITATION. Suppose, for instance, that Mr. Salmon is a hardware merchant in Philadelphia. There is nothing to hinder him from buying stoves and sending them to Bellonaland in perfect safety. There is nothing to hinder him from stationing an agent in Bellonaland to advise as to shipments, and practically to order goods out. There is nothing to prevent his actually proceeding thither, and doing the agent's work, *i.e.*, having the goods sent out to him. But the point is, neither the agent nor himself must order goods at large. If they do, they run in danger of becoming Bellonaland merchants. The direction must always (or, at least, habitually) pass through the machinery (single as it may be) of a manager, proprietor or agent of the business in neutral territory. It may seem strange that Salmon cannot write direct from Bellonaland to his Birmingham or Pittsburgh manufacturing correspondents and say—"Ship me one hundred stoves as per catalogue to Bellonaport," when he can say to his Philadelphia manager, "Get Chamberlain of Birmingham to send me one hundred stoves to Bellonaport." And perhaps to do so on one or two

⁸ May the reader be referred to *War and Its Legal Results* (Murray, London) by Professor Morgan and the present writer, p. 294 *seq.*

⁹ Cf. *The Juffrouw Louisa Margaretha*, 1 C. Rob. 203.

occasions, if there was really a substantial Philadelphia business going on, might not be fatal. But in other cases there is a real interposition of a crucial step in the neutral country,¹⁰ either: (1) the approval and adoption of the direction reported as desirable by the *agent* in the enemy country; or (2) the selection of a manufacturer or producer to fill the principal's (or the uncontrolled manager's) direction; or (3) the repetition of his wishes to the producer indicated by him; or (4) the appropriation of the proprietor's own goods to his direction.

There seems no reason why goods should not be ordered in the belligerent country to be procured and forwarded by a branch house in a neutral country. The firm is as much there as it is at the chief house, if indeed there be a chief house (it may be difficult to define that expression if the proprietor is constantly traveling). If Salmon were in Gothenburg he could buy stoves and send or take them to Bellanaland. I do not see why he may not send to his permanent agent there for them, just as well as to his manager at Philadelphia.

If there is no such controlling mind in the belligerent country but a mere agent, then a somewhat less severe rule will be applied; and although a general trade may be done in the belligerent country, it is possible that it will be regarded simply as an ancillary part of the activities of a single undivided trade—the trade of the neutral house. At all events, we may say that more numerous acts of general trade would not be so prejudicial in this case as if they were the acts of a principal or an uncontrolled manager. Much, in either case, will depend upon the scale of the business done in the hostile country, as compared with that done in the neutral one.

MANUFACTURERS. Where the merchant is also a manufacturer, the question becomes considerably simplified—at any rate, in the case in which he markets his own goods only. In that case, it would seem that all his goods, whenever and by what agency dealt with, must generally be referred to the place where the goods are manufactured. Let A, a domiciled Frenchman, have a piano factory in Canada, and many wholesale shops throughout the world, including one in New York. En route to New York by sea, if the United States was at war, one would say the pianos belonged to a Canadian house. *Aliter*, if the factory was a small item in the firm's activities.

TRANSACTIONS AFFECTED. Note, however, that it is not those goods alone which are involved in the particular transaction that fills a merchant with the character of carrying on a house of trade in the enemy country, that are liable to be considered enemy goods. It is *all* articles connected with the house the existence of which is so established. And, therefore, if a merchant, being more or less temporarily in a belligerent country, enters

¹⁰ Of course, it must always be understood that a substantial (and perhaps preponderant) general business is being done in the neutral country. Otherwise, it is only a blind.

upon a course of indiscriminate ordering from abroad, it is quite on the cards that his otherwise legitimate consignments from his own neutral house and its branches may be considered to be connected with his new and belligerent house of trade, not as exports, but as imports. An ancillary order would, of course, not affect his position. An import of screws, for instance, to complete the instalment of complicated machinery, exported by a neutral house, would not make the owners an enemy house of trade, even if such import were procured from an outside source by their agent in the belligerent country.

BANKERS, FINANCIERS, ETC. Although the business of financial houses, such as banks, insurance offices and the like, is not strictly a trade, the principles respecting trade must have an analogous application to them. What is the position of securities, the property of such concerns, in transit on the high seas? Cash, of course, is contraband; but securities have never been treated as such. Is a London bank's negotiable paper, en route to its branch in a belligerent country, confiscable? The bank is certainly doing business in the latter country—but we have seen that there is no enemy character involved in taking goods to an enemy country, and there does not seem to be a higher degree of identification in conducting financial transactions there. One does not become an enemy banker by lending enemies money, though it may be difficult to get it to them.

It is hard to resist the conclusion, nevertheless, that, in practice a neutral financial concern functioning in the belligerent country will be considered *pro tanto* belligerent. The present writer is not prepared, with a logical reason, to justify such a conclusion, which seems opposed to the analogy of mercantile affairs. Perhaps it is easier to draw a line, in the latter case, between trade *with*, and trade *in*, a country; the former being competent to neutrals as such, and the latter incompetent: whereas no such plain distinction can be drawn dividing the operations of banking into two clearly separated parts. But, in the case of insurance, it ought to be quite capable of being drawn. A marine insurance office, opened in Hamburg by New Yorkers, is merely a mode of doing business between New York and Hamburg. Remittances of securities by the one office to the other ought, on principle, to be remittances by one American agent to another, in order to enable them to carry out the work of their principal's American house of trade. It might be difficult if the Hamburg office invited insurances to be effected there by correspondence by parties in other countries.

PROPOSITIONS. Enough has been said to indicate the elusive nature of the subject. The writer is keenly aware of the unsatisfactory character of the discussion above put forward; but as little has been published on the topic, it is thought that it may be accepted as a basis for further inquiry. Legal science certainly failed adequately to deal with the problem of continuous voyage between 1864 and 1904. Every jurist would then have

been willing to admit that the enormous interference with neutral trade which the war of 1914 witnessed was not in accordance with principle. No country would have permitted a weak belligerent to deal so with its marine. But because of the refusal of the Continental jurists to see the uselessness of ideal restrictions on belligerent Powers, depending on the delicate appreciation of evidence by national prize courts, science gave forth a hesitating and uncertain sound on the novel proposition. The result was to encourage the vast encroachments of to-day.

It is the hope, rather than the expectation, that modern science will rise to a more emphatic appreciation of what is practical and necessary, if neutral rights are not to be playthings, that this paper, full of crudities as it is, has been written. It may shortly be advanced that:

1. Questions of domicile must be put aside as totally separate from questions of "house of trade."

2. In determining the neutral or enemy character of a "house of trade," the residence, presence, or active participation of the owner or owners (or "uncontrolled managers"), is not in itself decisive.

3. The most important element is the *general* nature of the business carried on, as distinguished from specific business connected with the genuine (and preponderant?) activities of the same firm or person in neutral or friendly countries.

4. Less important elements are:

(a) *The degree of practical independence exercised by the agent in charge.* The greater this is, the more likely is the business to be a house of trade in the enemy country, and not a mode of action of the house of trade in a neutral country.

(b) *The recurrent or habitual presence of a partner or proprietor.* This, though it may lessen the independence of the permanent agent, supplies an element of independence to the business, and may turn the scale.

(c) *The comparative importance and the general character of the business carried on in the neutral country.* This will not infrequently be decisive.

(d) *The allegiance and domicile of the proprietor.* If either of them is that of the belligerent country where general business is done, the fact may have great weight.¹¹

(e) *The allegiance and domicile of the employees.*

5. The local situation of the directing head of the entire business will not generally be of great importance if a center of *general* business activity, with considerable freedom of initiative, is established in a belligerent country. Nor will the *locale* of the controlling and supervising staff in a neutral country be decisive in such a case.

6. Given that the business conducted by an agent, partner or pro-

¹¹ *The Virginie infra* (concluding part of this article in the next number)

prietor in a country which is not that of the firm or proprietor's principal business activity, is of such a character as to be considered an enemy house of trade, goods connected with transactions "originating" with it are liable to be treated as enemy goods. But the meaning of "originating" is obscure.

7. It is not a transaction "originating" in a belligerent country for the agent of a neutral house to order goods from his firm in a neutral country or its servants or agents, or to dispatch them to the same, provided he is not carrying on a *general* business in a belligerent country (Cf. *The Jonge Klassina*).

8. The application of these analogies to the case of financial houses is uncertain and obscure.

9. In the case of merchants, or exporters, who are also manufacturers, their goods will *prima facie* be connected with the place of manufacture rather than that of distribution, at any rate until received in the latter place.

10. In the last proposition, "manufacture" may be extended to cover all modes of production, except the cultivation and preparation for the market of the raw produce of the soil (including mines and minerals, oil, stone, etc.). The exemption of fishermen seems no longer logical or necessary, now that the fishing trade has become one of organized capitalism.

11. The raw produce of enemy soil and fisheries is always liable to be treated as enemy goods. *Quare* whether and how far (a) sale and (b) manufacture is, of itself, sufficient to deprive it of this character.

III. AUTHORITIES

It will now be convenient to examine the authorities bearing on the question, with a view to a further elucidation of the principles.

It will be observed that there are two points on which we shall lay stress: (1) the elements which constitute a house of trade, and (2) the eventual confusion which arose, about 1814, between the conceptions of "house of trade" and "domicile"—counsel sometimes going so far as to say that domicile meant trading, and judges giving color to this strange doctrine by introducing the term "commercial domicile."

Westlake observes in his well-known book on *Private International Law* (§ 279) that "the domicile by which the belligerent or neutral character of property is determined for the purposes of war" is a totally different thing from civil law domicile, and that cases on the one topic cannot be applied as authorities on the other. Prize law domicile, according to him (though he rather illustrates than defines it), is wrapped up in trade, and he styles it "trade domicile."¹² This is a gross confusion of thought, resulting from a failure to discriminate between domicile and the so-called

¹² See also Westlake's *International Law (War)*, II, 141 *seq.*, where he seems to admit civil law domicile as a criterion of enemy character, but apparently only in the case of a trader, and not very explicitly or plainly.

"commercial domicile," which is nothing more nor less than "house of trade." Wildman, in his book published in 1850, makes this distinction very clear. He classifies the various ways in which persons may become affected with the enemy character, and of these the first two are (p. 36): (1) personal domicile, or national character acquired by residence; (2) commercial domicile, or national character acquired by trade. This latter is constituted merely by trade, and has nothing to do with residence. It is the business, not the trader, which is, so to speak, "domiciled" in the enemy country. Consequently, when Westlake says that prize law domicile is a different thing from civil law domicile, and when Lindley observes that the only important thing in ascertaining national character in time of war is the place where a person trades,¹³ they confuse "domicile" with "commercial domicile," and forget that the ordinary personal domicile of civil law is also a criterion, and the main criterion. But the fact was not forgotten by the Lords in the great case of *Udny v. Udny* (1869), 1 Scotch and Divorce Appeals, 441; nor by the other high authorities, such as Story, who have quoted prize cases and testamentary and matrimonial cases indiscriminately to establish points of the law of domicile.

THE ST. GEORGE. This is cited as a tolerably early case (1666) of the application of the principle of domicile; and it will be noted that it is stated to override allegiance (though this may have been because allegiance often in those days went along with duly registered and licensed domicile). One Du Prié, a born French subject, was domiciled in Hamburg for twenty years, "which regularly is sufficient," reported Sir L. Jenkins, "in law to excuse him, as I humbly conceive, from being subjected to the same reprisals with the rest of his countrymen." We may quote also another opinion of Sir Leoline, regarding the status of a born Dutchman domiciled in Sweden. "If the war in 1672 had happened to have been against Sweden, and not against Holland, . . . his being a sworn burgher at Colmar, and his paying Scot and Lot there, would, as I take it, have made him good prize, and that justly too; his being a Hollander born, his having a house at Amsterdam, and his passing a winter there, . . . would not have saved him."¹⁴

THE CHESTER (2 Dallas, 41). There is no reason to suppose that, in this early case before the Federal Court of Appeals (3 May, 1787), the court meant to lay down any other fact of national character than domicile. "Peter Theodore Vantylengen appears to have been a merchant, in a British settlement, on the Bay of Honduras; not barely having a transient residence, but carrying on trade from that settlement, like other inhabitants. It is not material to whom his natural allegiance was due." The contrast is between residence and allegiance: trade is only called in to show the settled and permanent character of the residence.

¹³ *Janson v. Driefontein, etc.*, Law Reports (1902) Appeal Cases, p. 505.

¹⁴ Wynne, *Life of Jenkins*, Vol. II, pp. 730, 785.

THE JUFFROUW LOUISA MARGARETHA. It seems a curious expression to say that a house of trade *has* a house of trade: what exactly it means may be doubtful. Yet the expression was used in an affidavit in this case (April 3, 1781), briefly referred to in the well-known case of the *Hoop* (1 C. Rob. 203). This instrument ran to the effect that

Mr. Escott was one of a house of trade, known by the name of Escott and Read, of London; that they had, for twenty years immediately preceding hostilities between Great Britain and Spain, carried on considerable trade to and from Malaga, and *had an established house of trade* [*qu.*, an established agent or partner] at Malaga, where Mr. Escott had resided about thirty years preceding. . . .

This is a real instance of the two meanings of the term "house of trade." In the first place it means a partnership, in the second place an agency.

THE JACOBUS JOHANNES. This is a case which really decides much less than it appears to. A, a proprietor of the business, received, in belligerent Holland, cargoes dispatched by his partner B, on their joint account in and from a Dutch settlement, St. Eustatius. A was resident and apparently domiciled in Denmark,—at any rate he was not domiciled in Holland, and it was held by the Lords' Commissioners of Appeal in England (Feb. 10, 1785) that his goods concerned in the transaction were not confiscable, though the share of his partner was so, on account of B's having acquired a Dutch domicile. But it was not held that the partners were not carrying on a Dutch house of trade at St. Eustatius; on the contrary, Stowell expressly says, in the *Vigilantia*, they were partners in a house of trade. It is of importance to note, therefore, that a house of trade was considered to exist in Dutch territory when (1) one partner and the only or principal counting house was there, (2) that partner was domiciled there, and (3) the business consisted of collecting Dutch produce there and shipping it to other countries (and apparently usually to the agent of the firm, or a partner temporarily at least in Holland).

THE OSPREY. This case proceeded on the same lines ten years later (Lords, March 28, 1795). A fishery was carried on in France; the share of a partner "domiciled" in France was condemned, while the share of a partner "resident" in America was restored. It is not surprising that Stowell adds that: "From these two cases a notion had been adopted that the domicile of the parties was *that alone* to which the court had a right to resort (*ibid.*, 14).

ZACHARIE, COOPMAN & COMPANY'S CASE (*The Nancy, Liberty, Essex*, etc.). But in 1798 (April 9), the Lords laid it down that whether or not these cases might have been rightly decided, it was not competent, *after* the war had commenced, to enter into *or continue* in a house of trade in the enemy's country without forfeiting the neutral character. The neutral trader may withdraw his goods in safety, and that is all that *The Jacobus Johannes* and *The Osprey* meant. It would seem in this case, of which there

is no real report, that the Lords were not considering the case of a sole trader, but that of a partner with other persons, established in, and probably owing personal allegiance to, a belligerent country. It might be thought that the position of a sole trader carrying on business in the belligerent country was indistinguishable in principle. Yet there is a kind of difference between a person carrying on his own business in a country become belligerent, by agents and servants, and a person continuing to be a partner with domiciled belligerents. Consequently, in the next case we shall see Stowell still laying stress on the element of *post bellum* interposition in the war, in a case where it was only neutral-domiciled traders that were concerned in the business. Of this great case, the real origin of the modern "house of trade" doctrine, we have, unfortunately, but the most meager report. It could doubtless be ascertained by a reference to the archives who were present at its decision, and no surprise would be felt if it proved to be the work of Sir William Grant. Grant, a much younger man than Lord Stowell, has had his fame obscured by the fact that he sat with colleagues in the sacred obscurity which surrounded the Lords Commissioners of Appeals in Prize Cases. Acton's slim volumes record a few of their decisions, but not many; enough, however, to show the great share which Grant took in them.¹⁵ Grant became Master of the Rolls, but his work in the recondite sphere of specific performance, election and *cy-près*, is scarcely the sort of thing calculated to secure immortality. To many it will seem that his clear and polished opinions show even a higher rank of judicial ability than do Lord Stowell's. If he sat in Zacharie's case (1798), we may confidently surmise that the principal share in the decision was his.

THE VIGILANTIA (1 C. Rob. 1). This was decided in 1798, and is the first of Lord Stowell's reported decisions. It was the case of a Prussian ship taken on May 4th of the same year during a voyage from Holland to Danish territory, viz., Greenland. Britain and Holland were at war. Ship and cargo¹⁶ belonged to a Prussian merchant, Mr. Brower, but the ship had been Dutch, and the master swore that he believed the whole Prussian coloring was fraudulent.¹⁷ Stowell so held, but he proceeded (p. 11) to state his opinion that, even supposing Mr. Brower to be the actual proprietor of the vessel and resident at Emden, yet this vessel "and her concerns," however it might be with respect to other ships and "concerns" in which that

¹⁵ There is one in the Appendix to the 5th Volume of C. Robinson's Reports: The *William*.

¹⁶ "There was no cargo," says Stowell, "but the vessel was fitted out with stores necessary for the Greenland fishery."

¹⁷ An extraordinary vagueness as to nationality is revealed by the master's evidence. "He was born in Holland, he had always been a subject of the Batavian republic [or its predecessors, the States-General], but thinks, from a paper which he received from Emden, that he is now a subject of the King of Prussia." though he never was at Emden, and never took any oath of allegiance to the Prussian monarch.

gentleman might be engaged, were liable to be treated and considered as Dutch property. Unless it could be maintained as a rule, without any exception whatever, that the domicile of the proprietor was conclusive (p. 12), a ship which had all its commercial connections with Holland must be liable to condemnation.¹⁸ The expression "house of trade" was not used, but the judge lays it down clearly (p. 15) that there exists "a doctrine supported by strong principles of equity and propriety, *that there is a traffic which stamps* a national character on the individual, independent of that character which mere personal residence would give him." This is the foundation of the doctrine of "house of trade" and obviously it has nothing whatever to do with domicile or personal residence at all. The doctrine, in this form, seems to have been new to Stowell, though he approved it. "I am instructed in it," he says, "by *Zacharie, Coopman & Company's* case." Like the Lords in that appeal, unfortunately, Stowell does not lay down, even in the sketchiest manner, what the trading connection constituting a house of trade may be. He limits himself to saying that it would exist in the particular case before the court, even if Brower were the real proprietor and really settled in Emden.¹⁹ We have here a case of our hypothesis that no substantial work is done by the concern in the neutral country. In such circumstances, as was said above, it must be very difficult to make out that the house is a neutral one, functioning in the enemy country indeed, but having its central motive power in a neutral one.

Here is a ship as thoroughly engaged and incorporated in Dutch commerce as a ship can possibly be; she is fitted out uniformly from Amsterdam; she is fitted out with Dutch manufacture; she is fitted out for Dutch importation,—*in all these respects employing and feeding the industry of that country*;²⁰ she is managed by a Dutch ship's husband, and finding occupation for the commercial knowledge and industry of the subjects of that country; she is commanded by a Dutch captain; she is manned by a Dutch crew, and brings back the proceeds of her voyage, for the purpose of Dutch consumption and Dutch revenue.

He lays great (and indeed decisive) stress, however, on the fact that this employment of the vessel as an asserted Prussian, had commenced with the war, continued with the war, and was evidently on account of the war. We are left uncertain whether a pre-war Prussian owner, carrying

¹⁸ But cf. *The Jonge Ruiter*, *infra* (where, however, the ship does not appear to have been of previous enemy nationality).

¹⁹ Emden, as is well known, was the great entrepôt for Holland and attempts were made (and failed conspicuously) in *The Imina* (3 C. Rob. 167) to have its commerce treated as enemy commerce. In *The Jonge Pieter* (4 C. Rob. 79) it was indeed held to be too dangerous a port for British subjects to trade with. The town had been Dutch until the eighteenth century.

²⁰ Cf. what was said, *supra*, as to the attack on a belligerent house of trade being in effect an attack on the small people who are employed by it.

on (with no Dutch partners) so Dutch a trade with no particular apparatus in Prussia, and with no specific control by himself, would have been equally harshly regarded.

The fact that this, our basic case, concerns so peculiar a trade as the management of a single ship, makes it difficult to draw general conclusions from it. The conclusion, however, emerges that, if the carrying on of business in the belligerent country is such as to afford employment to a large number of persons, who are subjects of (and permanently domiciled in) that country, a presumption at least arises that a belligerent house of trade has been set up. The conclusion also appears that, if business is habitually done without referring to the proprietor or uncontrolled manager established in the neutral country, and having nothing to do with the export or import of the products or requirements of the business in that neutral country, the mere fact that the proprietor is settled there will not of itself preserve the neutral character of the house, even though he takes some personal part in the business.

What was in the judge's mind can best be appreciated from his supposititious case:

Suppose the naval arms of France had been triumphant in her present contest with Great Britain, and that all the British Greenland ships could no longer have been navigated as such from British ports; suppose [neutral merchants] should say, we will purchase your vessels, but they shall still navigate to Greenland; they shall still continue under your management, and be fitted out in your ports; they shall still contribute to the industry of your artificers; they shall be conducted by the skill of your own navigators, by the attention of your merchants, and they shall supply your manufactures and revenue,—in my apprehension the enemy would be justified in saying: "You, the neutrals, are in this transaction mere merchants of Great Britain, your traffic is the traffic of Englishmen; with respect to this commerce, it has all the marks of English commerce upon it, and as English commerce it shall be considered and treated by us."

Here again the judge had obviously in mind the *post-bellum* initiation of the house of trade. And so far the doctrine still revolves on the danger of allowing neutrals to come in *flagrante bello* and defeat the belligerent's rights by carrying on his opponent's trade for him.²¹

THE EMDEN (Nov. 6, 1798. 1 C. Rob. 16). We mention this case, rather by way of parenthesis, because the master of the asserted Prussian owner's (Bauman's) ship, although a Prussian himself by birth, was held to have acquired a Dutch character for prize purposes by his employment for ten years on Dutch ships trading from Amsterdam, which employment, we suppose, may be called his "house of trade." "By such an occupation he is divested of his national character, and becomes, by adoption, a perfect Dutchman," says Stowell. And that, not because he had acquired a Dutch

²¹ But cf. *The Frederick* (Sept. 7, 1803), 5 C. Rob. 8.

domicile,—“he is a simple man who has established no domicile by family connections.”²² In *The Endraught* (1 C. Rob., p. 22), a master, who was by birth a Dane, was considered a Dutchman “under the general rule that mariners are to be characterized by the country in whose service they are employed,”²³—where their house of trade is, so to speak.

Inversely, in the case of *The Minerva*, 1 Privy Council Register (MS.), the crown was advised by the Privy Council to restore (though, of course, extra-legally)—“as the master is the owner, and has been so much engaged in the trade of his country.”

THE *BERNON* (1 C. Rob. 102). The next reference to the matter appears to be found in the case of *The Bernon* (Dec. 19, 1798). So far, it will be apparent that, to the possible surprise of the reader, the doctrine of “house of trade” is scarcely much more than a century old, and appears mainly as a doctrine directed against the interposition of neutrals in war-time to relieve a belligerent by taking up his trade, though the germ of a much wider doctrine had made its *début* in *Zacharie, Coopman’s* case. *The Bernon* was decided at a stirring moment. Napoleon made his indefensible attack on neutral Egypt in 1798. on Lammas Day the battle of the Nile was fought; and by the end of the year a Russian alliance against France was confidently counted upon in Britain. In these circumstances, *The Bernon* came before Lord Stowell. Although his language is general and looser, it does not seem to carry the doctrine any further, nor exactly to enunciate the wide doctrine of identification which might be deduced from *Zacharie, Coopman & Co. The Bernon* had been sold in belligerent France to an American. Unlike French law, Anglo-American law concedes the possibility that a ship, like any other article, may be bought by a neutral in a belligerent country and carried away. But it is a suspicious transaction, ships being so all-important to the belligerent, and the suspicion is much increased when the purchaser is closely identified with the belligerent country. That would have been enough to condemn *The Bernon*, and no house of trade doctrine was needed to reinforce it. Stowell took occasion, however, to say (*ibid.*, p. 105) of the proprietor: “He may have been in Europe during the war, engaged in the trade of France; and if so, such an occupation would supersede his pretended neutral character.”

This looks like a pretty broad enunciation of the doctrine of identification by trade, but Stowell lays little stress on it. His main concern is to establish an identification by domicile. The steps in his train of thought are, “He trades, therefore he probably resides permanently, therefore he

²² This must be added to the long list of quotations which are conclusive against Westlake’s theory that prize law domicile means trading residence and has nothing to do with ordinary civil law domicile. Cf. the articles cited, *supra*, in *Jour. Soc. Comp. Leg. and Juridical Review*.

²³ This would scarcely, it would seem, extend to the casual and fluctuating employment of common seamen, or perhaps even of subordinate officers.

is probably domiciled." He begins by laying down the presumption of domicile from residence:

Now first, wherever it appears that the purchaser was in France, he must explain the circumstances of his residence there; the presumption arising from his residence is, that he is there *animus manendi*²⁴ and it lies on him to explain it; and, secondly, to satisfy the court fully on this business, the claimant ought to be prepared to meet the presumption which arises, as to the property, on the face of the transaction; and which is confirmed by the evidence of Mr. Alliston. This he was bound to accomplish. In what manner is it performed?

The judge then examines the career of the claimant, Mr. Dunn, but entirely with regard to his residence, *i.e.*, permanent residence or domicile. His trade is hardly alluded to, and only incidentally, as throwing light on his *animus manendi*. "I do not mean to lay down so harsh a rule," says the judge (p. 105), "as that two voyages from France shall make a man a Frenchman; I do not say that;" but he had not rebutted the presumption that, being²⁵ in France, he was there *animus manendi*. He had a wife and children in Boston, where he had lived fourteen years "when not at sea" (but he did not say how long that was); he had been at Bordeaux in 1796 (and possibly long before); he was to return to Bordeaux whether he obtained a freight or not, and he seemed to have more or less permanent lodgings there. All of this is matter important for the ascertainment of his ordinary civil law domicile, hinging on his *animus manendi*. The element of house of trade only comes in, in the chance suggestion that even if his wife was in America, still his engagement in French trade would supersede his neutral character. It is thrown out as a last resource: even if it were held that his trading in France was not sufficient ground to infer an *animus manendi*, in the face of the fact that he had a wife in America, yet he was clearly carrying on French trade, and carrying it on by way of post-war interference, so that he would come within the principles of *The Vigilantia*.

Another point occurs to the judge: as in *The Vigilantia*, the nature of the ship's constant employment may, in the case of a vessel, be important on the question of national character. "The employment of a vessel may impress a national character" (p. 102). This ship had previously made

²⁴ We adduce this as an additional proof that domicile, as the primary criterion of national character in prize cases, is simply the domicile resting on "*animus manendi*" of ordinary civil law, and is not a Pickwickian "prize" (or "trading") domicile, compounded of trade and residence in unknown proportions. The passage also supplies the reason why "residence" is so often used as synonymous with domicile: it generally followed that where one was resident, there one was domiciled.

²⁵ Note that he does not say "being and trading in France." This has an important bearing on Westlake's eccentric contention that "prize domicile" is something special and peculiar, flavored with trade. He does, indeed, say, when considering the effect of the claimant's admitted four years residence in France, that it is important to consider whether it was occupied in trading or how (p. 337), but simply because it would be a fair inference that if he was there to trade he could remain there trading.

a voyage from Bordeaux to a port of French naval equipment (Brest), with wine; a suspicious trade. But this Stowell held insufficient to condemn. He refused, however, to allow the claimant to clear up the question of his domicile any further (his primary evidence contained much prevarication), and decided to condemn on that.

As to the cargo, the report is very unsatisfactory. It appears not to have been claimed by the master or owner for himself, but for one Peters, of Bordeaux, apparently an American and "as good a neutral as myself" (one of the witnesses). Mr. Peters' career and commercial adventures are left in this vague state and do not concern us (1 C. Rob. 102).

THE JUFFROUW ELBRECHT (*ibid.*, p. 127). In this case (Jan. 10, 1799), the judge declined to say absolutely that the fact of a ship's being engaged continuously for three years in Dutch trade²⁶ would be enough to condemn her. The case was decided on another point—the alleged Prussian owner was held to be really such.²⁷

THE HOOP (1 C. Rob. 129). This case (Jan. 10, 1799) strongly suggests that a house of trade meant a partnership. The master knew little or nothing about the facts of proprietorship. He made a claim for the ship as the property of one Uven. The pass, however, was made out in other names. "It is, however, suggested that Uven may be a member of a house of trade. . . . A pass should describe, explicitly, one of the partners of a house of trade at least." If a house of trade means necessarily a partnership, as this suggests, the fact has an important bearing on the case of *Zacharie, Coopman & Co.*, which we shall so often encounter as we proceed. That case was clearly one of a partnership, and it is possible that, when it was decided, the only object was to strike at a domiciled neutral who went on trading, not only in the enemy country, but with domiciled enemy partners.²⁸

THE ARGO (1 C. Rob. 159). We cite this case (Jan. 22, 1799) for a phrase of Lord Stowell's, "A man by birth a Prussian, but who, being a single man, and without a residence, had no other national character than that of the service in which he was employed." It shows that national character is primarily ascertained by family connections and residence, apart from business, *i.e.*, by ordinary civil domicile, contrary to the Westlake-Lindley doctrine.

THE ADRIANA (1 C. Rob. 313). Mr. Boland was of British birth, but resided from 1784 to 1794 in America. In the latter year "he thought it material to his interests to be present in France, to carry on his mercantile concerns." That was his own account, and the French connection being so general, and no proof or mention being made of his house of trade in America, nor of any circumstance pointing to a continuance of his connec-

²⁶ "The master corresponded with Dutch merchants, and not at all with the asserted owner."

²⁷ Cf. *The Vigilantia*, *supra*, and *The Portland (the Frau Louisa)* *infra*.

²⁸ In *The Jefferson* (*ibid.*, p. 325, May 9, 1799), the term "house of trade" was used as equivalent to "partnership."

tion with that country (except a small and inadequate one),²⁹ Stowell was inclined to consider his character French.

The shipment was one of brandy from Bordeaux to Hamburg.

The original act is not a shipment made of American produce, nor with a destination to America; but it is a shipment from France to another country of Europe; it is an original adventure, not springing out of any antecedent transaction, in which the party could be considered as an American; and in short, it is as much a French concern as if it was conducted by a French merchant. Under these circumstances Mr. Boland would find it very difficult to sustain his American character; and I should be strongly inclined to hold that in this individual transaction, he is to be considered as a Frenchman.³⁰

Mr. Boland thus seems to be regarded as a domiciled American carrying on a French house of trade. And it is rather because of the entire want of any American business carried on by the claimant, than because of any very definite organization in France, that such a house of trade could have been held to exist. But the judge came to the conclusion that Boland was not in fact the owner, and rejected his claim on that ground (April 23, 1799). The case shows, however, that *merely* to be present doing business, and even repeated business in the belligerent country, does not of itself create a house of trade. It is when the business has no connection with the country of neutral domicile that the danger zone is reached; and if the neutral is actually present in the belligerent country and is doing no business at all in the country of his neutral domicile, the inference of identification with the enemy is irresistible.

A phrase of Stowell's in this case is worth noting: "It is hardly necessary to observe that the transactions of neutrals resident in France are, from the very nature of their situations, liable to great suspicions." Now, as Westlake would have it that everyone residing in France and trading there has a prize law domicile in France, such an observation would in their view be perfectly ridiculous. If a man has a prize law domicile in France, it is absurd to talk of having "great suspicions" about his transactions: the case has passed beyond a suspicion.

THE VROUW MARGARETHA (1 C. Rob. 336). This case shows negatively that merely being in Spain transiently and buying wines there in course of transit to Holland, is but carrying on a house of trade in Spain (June 6, 1799).

THE SUSA (Dec. 30, 1799, 2 C. Rob. 251). This was a case where condemnation proceeded on the unsatisfactory nature of the preparatory examination and the papers, which did not clearly show the property to be neutral. It is here cited because of Stowell's dictum that

persons carrying on the whale fishery of France, without having any foot-

²⁹ The fact of a single ship coming from America to Europe for him with rice and tobacco. As Stowell says, "the cargo might have been ordered from France."

³⁰ Compare Mr. H. Grant's *butter* in *The Josephine*, *infra*.

ing in America, or any visible thread of connection with it; but carrying back the produce to France and supplying the manufactures and industry of France, without any communication or intercourse whatever with America . . . were just as much to be considered as incorporated in the commerce of France, as if they were native merchants of France . . . be their personal residence where it might.

Such a house of trade having absolutely no trade connection with the neutral country is a very simple proposition. Here again it will be noted that Stowell now says nothing (as in *The Vigilantia*) about the interposition of domiciled neutrals in such a belligerent traffic arising *after* the outbreak of the war. So far as his language goes, it is consistent with holding that all neutral interposition (unconnected with operations in the neutral territory) in the French whale fishery identified the neutral interests with France and made them confiscable, whether the interposition dated from pre-war times or not.

THE HARMONY (2 C. Rob. 322). In this leading case, the only criterion adopted was that of domicile (Jan. 16, 1800). The house of trade was America, and it was not sought to condemn its property on the ground that it was carrying on business in France, but merely to condemn the share of a partner residing³¹ in France. It was in this case that Stowell laid down (*ibid.*, Vol. 2, p. 329) that "Time is the grand ingredient in constituting domicile." And, so far from saying that a trader may get a "prize law domicile" by coming and trading, he gives respectful treatment to the suggestion that by coming to a country for a special purpose, such as trading, he may not acquire a domicile there at all. His accurate conclusion is that the *animus manendi* is all-important. Time will generally clinch it, but the fact of coming for a particular purpose, such as trading, may have its weight in rebutting it. He commences with the very just remark that—"the active spirit of commerce now abroad in the world increases the difficulty [of determining domicile], by increasing the variety of local situations in which the same individual is to be found at no great distance of time; and by that sort of extended circulation, if I may so call it, by which the same transaction communicates with different countries, as in the present cases, in which the same trading adventures have their origin (perhaps) in America, travel to France, from France to England, from England back to America again, without enabling us to assign accurately the exact legal effect of the local character of every particular portion of the divided transaction." Stowell, therefore, was not unacquainted with our modern difficulties, encroaching on the simplicity of an older day. This is a consolation!

As *The Harmony* turned on domicile, its principal interest to us is negative. It shows what was not considered to amount to a house of trade

³¹ *I.e.*, domiciled. "It is a question of residence or domicile," Stowell, at p. 322.

in France. One Murray, an American, was a partner in a firm which had a place of business in America, presumably with the novel apparatus of accounting. He proceeded to France and remained in that country for the purpose of receiving and marketing successive cargoes dispatched by his American partner from American ports—but the time of his residence was short. Short as it was, however, Stowell concluded that it was his proved intention to remain indefinitely in France, and condemned his share of the cargo. Some of Stowell's language is open to misconstruction on a cursory reading; but on the whole he makes it clear that the residence of a neutral trader in a belligerent country must be permanent in order to confer on him the national character of that country, *i.e.*, it must be domicile. "If a house of trade sends a partner to France, with an intention even of not mixing in any other trade than the business of that house, yet I think that such an encumbrance, connected with a *permanent* [italics ours] residence in France, would impress a national character upon him." Upon *him*, notice, not on the business, nor even on the French business. It is a pure question of the status and jeopardy of the individual partner. Had he been a mere agent, there would be no question at all; the property not being his, his personal status could not affect its liabilities, whatever business he was carrying on for his principals, its owners.

It seems scarcely necessary, therefore, to quote from *The Harmony* at length, and yet there are one or two passages which must be given in order to show, negatively, what did *not* amount to the establishment of a house of trade, involving the interest of all the partners. In the first place, Mr. Murray's operations were almost considered as an independent business with an independent capital. They came pretty near what we should now style a branch. The correspondence in the case pointed to the setting up of a general and continued commercial agency in Europe. And the Americans write "we draw on your capital in Europe." "Speaking of it," says Stowell, "as if it were a distinct establishment." They trust greatly to Mr. Murray's advice and initiative. "Advice respecting contracts with government. . . . We may look forward to a time not very remote, when the genius of liberty will bear down all its opponents, and create an unprecedented commercial activity in Europe. In such an event, we are better circumstanced than most others; as *everything being under your immediate direction*, will prove a great security."

It was urged that there was nothing specially connecting these European operations with France, except Mr. Murray's personal presence there. And it was attempted to be asserted that he was only in France to escape the unwelcome attentions of English and American creditors,³² and not for any purpose implying permanent residence. It is indeed re-

³² P. 340. Hamburg creditors were, however, alleged in the same breath to have attached his property in France, and if English creditors could not do so, yet Americans could.

markable that the case proceeded on a sort of *ex post facto* estimation of Mr. Murray's intentions. When the ship was captured and the claim made in 1795, he had very little connection with France indeed, and that little ambiguous. The suit depended for five years—and it was in view of his continued residence in France in the meantime that his intention to reside there at the time of capture was inferred.³³ It does not, of course, follow that a domicile *acquired pendente lite* would suffice to condemn, though such is more than probably the case. Here, it was the *evidence* that accrued *pendente lite*. But, coupled with letters that showed that another partner had simultaneously been sent over to attend to the affairs of the house in England, the *ex post facto* four years in France (joined to a previous shorter residence there) were held to show the *animus manendi*, and to make Murray a domiciled Frenchman.

To sum up, he was "conducting" the business of his house, receiving cargoes and disposing of cargoes, giving accounts of the markets in France, and directing mercantile adventures there. All this did not make the business he carried on a French house of trade. Only his own share in the consignments was confiscated. And it would have equally been confiscated if he had been a sleeping partner, living retired at Aix-les-Bains. All the insistence by Stowell on his *trading* in France was merely a matter of evidence as proving his intention to *live* there. The short period of four years accepted as conclusive does not show, as Westlake seems to have imagined, that prize law domicile was a domicile obtained by comparatively short residence, provided it be trading residence. All it shows is that prize judges are rather apt to infer intentions from slender premises. We may feel that Mr. Murray had hard measure—and I think Stowell thought so, but if a person lives four years in a country, and not as a casual observer, but in pursuance of a settled trade which is expected to become very profitable in a future posture of the European scene, under his direction, then it is not very strange that it should be held that he intended to remain there permanently, and that it was on the whole more likely that his wife and child would be called to him, in quieter times, than that he would return to their American home. But, once more, all this has nothing to do with "house of trade," except to show what a house of trade is *not*.

THE INDIAN CHIEF (3 C. Rob. 12). An appendix to *The Harmony* is furnished, about a year later, by *The Indian Chief* (Feb. 27, 1801). Again the personal domicile of the claimant is alone regarded as important. There is no conception of his house of trade affecting him with another character. His trading in the belligerent country was important only as affecting the question of the permanence of his residence there.

THE CITTO (March 17, 1800, 3 C. Rob. 38). This was again a case

³³ "Had he returned to the United States, immediately after [the capture], I do not hazard much in saying that restitution would have been decreed." Per Marshall, C. J. (*The Venus*, 8 Cranch, 300.)

of personal domicile, as is apparent from the fact that the goods were claimed as the property of "the house of trade of" Collins & Bowden, of Guernsey. The only question was as to the share of Mr. Bowden. His national character for this purpose cannot have been supposed to depend on whether he was trading or not in some enemy country, because that would only have affected the goods engaged in such trade, and *ex hypothesi* the goods libelled were concerned in friendly Guernsey trade. It is apparent that the real question was not as to Mr. Bowden's trading in Holland, but as to the permanence of his settlement in Holland. He had lived there six years, went to Guernsey for eighteen months on the approach of the French, and then returned to Holland and remained over three years "to collect debts." It is not surprising that, even though he disclaimed an intention of remaining there permanently, and professed strong anti-republican principles, Lord Stowell pronounced him to be affected with a Dutch character, apparently as domiciled in Holland, though the word "resident" is loosely used.³⁴

THE INDIANA. This is a case before the Lords (Feb. 7, 1800), which was cited to Stowell as establishing the doctrine which may be termed that of contagion, *i.e.*, that if a merchant is established as a trader in a belligerent country (although not personally present there), he becomes a hostile trader to all intents and purposes, and his goods, in whatever innocent traffic engaged, become confiscable. But it did not go that length. It merely decided, on the lines of *Zacharie, Coopman & Company's* case, that personal domicile was not always and absolutely decisive. *Zacharie, Coopman's* case (1798) had dispelled such an idea in the case of persons who, after the outbreak of war, continued to carry on a house of trade in the hostile country. That case had shown³⁵ that they could not go on trading as before (even if already domiciled in a neutral country). *The Indiana* showed that they could not go on trading as before if they went away and acquired a domicile in a neutral country. It is really an *a fortiori* case.

Mr. Sontax, presumably a domiciled Dutch merchant, quitted Holland permanently on the French irruption in 1799, acquiring an Altona domicile, and the principle of *The Osprey*³⁶ probably allowed him to take his goods with him, or at any rate to remove them without delay. But the analogy of *Zacharie, Coopman & Company's* case prevented him from continuing his house of trade in Holland as before. His change of domicile, for it must have been held to amount to a change of domicile,³⁷ could not save him.

³⁴ As it so often is, since residence inferred domicile.

³⁵ Subject to what has been observed regarding sole partners, and persons with no domiciled enemy partners.

³⁶ Extended a little so as to cover the case of a domiciled *enemy* subject withdrawing from the enemy country on the outbreak of war. Halleck denies this extension to be law in America, citing *The Venus* (8 Cranch, 253).

³⁷ "He had emigrated," says Stowell (*ibid.*, p. 44). His allegiance is not stated.

By this time, accordingly, the idea that domicile was a sole criterion had been almost completely exploded. *Zacharie, Coopman & Company's* case, denying to the pre-war domiciled neutral partner of a business, carried on by domiciled enemy partners in the enemy country, any protection for his share, had really revolutionized the position, and all that remained to be done was to generalize the new doctrine, and show that it applied also to businesses where there were no partners in the enemy country, but only servants or agents; whether the proprietors were originally of neutral domicile, or obtained it *flagrante bello*. *The Indiana* proves the proposition, in the case where the neutral domicile was obtained *flagrante bello*, but it will be long before we can point to a definite case of condemnation where it existed before the war. It is singularly difficult to find a square case of a domiciled neutral trader, or traders, carrying on a pre-war house of trade without enemy-domiciled partners in a country which subsequently becomes belligerent, and then relying on his or their neutral character to absolve them throughout. In *Zacharie's* case there were enemy domiciled partners; in *The Vigilantia* and *The Bernon* it was a post-war interposition; in *The Indiana*, it was a case of technical enemies becoming post-war neutrals; *The Portland*, we shall see, was a case of the same kind; *The Harmony* turned on belligerent domicile, and so did *The Indian Chief* (I). (3 C. Rob. 12).

THE PORTLAND (March 7, 1800, 3 C. Rob. 41). In this case we get no great advance in principle but some light on the crucial question of what constitutes a house of trade. *The Portland* was an American ship taken December 20, 1795, and restored, the voyage being from Hamburg to London. The contested claims were for cargo belonging to a Mr. Ostermeyer, goods of his on nine other ships³⁸ being also concerned. At the very outset of Stowell's judgment, the distinction between domicile and house of trade is sharply taken. "[He is] described as domiciliated at Blankanese [which is a suburb a few miles west of Altona and then, of course, in Danish Holstein], and as having a house of trade at Altona." This is the first occasion on which the two conceptions are distinguished. Mr. Ostermeyer had previously to 1794 been solidly imperial. Ostend, where he lived and traded on a large scale, belonged to the Emperor.³⁹ But in 1794, the French republican troops overran Belgium and occupied Ostend; Mr.

³⁸ *The Spazamheid, Younge Ferdinand, Hoop, Juffrouw Alida, Jonge Isabella, Jonge Emilia, Frau Louisa, Floreat Commervium* and apparently another unnamed (or, more probably, though Stowell is made to say "nine other ships," *The Portland* was one of the nine).

³⁹ It is quite irrelevant, but we remember some years ago seeing in a very well informed periodical (*The Musical Times*, London) a note of sarcastic exclamation placed after the quotation of the original dedication "To the Emperor of Germany" of Haydn's *Creation*: the writer being under the impression that the sovereign of Vienna and Antwerp was "Emperor of Austria." Needless to say, there was no Emperor of Austria until 1804.

Ostermeyer, professing horror at their principles and practice, retreated to Blankenese in Denmark ⁴⁰ dissolving his partnership with one De Coninek, and, according to his own account, severing all business connection with him. He established himself and his family at his new abode, and set up business on his own account at Altona, then in Danish territory. Stowell found, as had seemingly been the case in *The Indiana*, that the claimant's emigration was *bona fide* and permanent. Otherwise, his imperial domicile would have remained, and the case would have been easy and in fact unreportable, as he would have been an ally trading with the enemy.

Stowell struck five cases out of the proceedings: *The Portland's* cargo itself has no further interest for us, as the previous judge had implicitly found that the voyage had no enemy connection, and Stowell found that the same might be said of *The Spazamheid*, *The Younge Ferdinand* and *The Hoop*.⁴¹ And the claim in *The Floreat Commmercium* failed on a point of procedure. The interest of the cause centered in the remaining four cases.

Now the first thing that Stowell had to do was to disclaim the idea that if an Ostend connection was proved in respect of any of Mr. Ostermeyer's transactions, the enemy character which might conceivably arise out of that would extend to *all* his business, however little it might have to do with Ostend. To disembarass the proceedings of all the non-Ostend cases, he first of all had to make it quite clear that no Ostend trading could affect trade which had nothing to do with Ostend. And in performing this preliminary work, sweeping out of the cause *The Portland*, *The Spazamheid*, *The Younge Ferdinand* and *The Hoop*, he was not scrupulously meticulous about his language. His one object for the moment is to disclaim the doctrine of contagion and, in disclaiming it, he is not careful to distinguish the various circumstances which confer an enemy character. He has in mind the standard case of a person domiciled and trading in one country and carrying on business also in others; he is not thinking particularly of national character based on domicile and national character based on trading, and he speaks of the two criteria indiscriminately. With this in mind, let us read these preliminary observations of his:

Unless it can be said that trading in an enemy's commerce makes the man, as to all his concerns, an enemy, or that being engaged in a house of trade in the enemy's country would give a general character to all his transactions, I do not see how the consequences of Mr. Ostermeyer's trading to Ostend can affect his commerce in other parts of the world. I know of no case, nor of any principle, that could support such a position as this,

⁴⁰ The fact that Holstein, though Danish, was also nominally imperial, may be disregarded. The imperial supremacy has never been supposed to be material on questions of national character. Ostend, on the contrary, was actually governed by, or on behalf of, the Emperor, as part of the Hapsburg patrimony.

⁴¹ Presumably Dutch for the *Hope*, and (more or less) so pronounced.

that a man having a house of trade in the enemy's country, as well as in a neutral country, should be considered in his whole concerns as an enemy's merchant, as well in those which respected solely his neutral house, as in those which belonged to his belligerent domicile.

It is clear that, except for the one purpose of disclaiming the doctrine of contagion, this language is not precise. To begin with, the judge speaks of "trade in" a country, and immediately switches off onto "trading to" it, a very different matter, for there is no doubt that a neutral may trade to an enemy. Then he ends by speaking of "belligerent domicile," whereas he set out to speak of "having a house of trade in the enemy's country." Some have inferred from this that domicile means nothing more nor less than trading (or trading coupled with personal presence), a conclusion utterly inconsistent with all Stowell's careful researches into the intention of permanent residence in *The Harmony* and *The Bernon*, and with his statement of the reason why domicile confers an enemy character, which have nothing whatever to do with trading. The fact is, the judge had in mind the standard case of enemy character, which *as a fact* is that of a merchant domiciled and trading in a particular place, and may be carrying on business elsewhere; and he is not careful to insist pedantically on distinctions and varieties. It would, indeed, be impossible to lay any stress on the use of the word "domiciled" at all, for that would make him say that a belligerent domicile does not condemn the goods of the owner's business carried on in a neutral country, which is exactly the contrary of his opinion on that matter.⁴²

Enough has been said to show that no definition of what constitutes enemy character can be built upon these *obiter* expressions of Stowell's, without making nonsense of his considered decisions. So that when we find him making no mention of any necessity that the neutral's participation in the trade of the belligerent should have sprung up *post bellum*, we cannot absolutely infer from this that he had now come to think that the neutral who had a house of trade in the enemy country (whether he had enemy partners or not) was, by that fact alone, identified with the enemy *quoad hoc*. He had squarely placed the neutral's liability on the fact that he was interposing to relieve the enemy from the consequences of war, in *The Vigilantia* and *The Bernon*, only a year or two before, and I cannot see that he had changed his mind. I think if he had, he would have said so. And certainly there was nothing in *The Indiana* to change it. That, like this, was a *flagrante bello* case. Nor was *Zacharie, Coopman & Company's* case necessarily coercive. We have no report of the reasoning in that case, and there were enemy partners there.

The *obiter dicta* of great men have led to very bad law. Later authorities, treating them in their humility as verbally inspired, forget to read them

⁴² *The Franklin*, *infra*.

under qualifications of the facts of their context. "I distrust *dicta*," said a great English judge (Jessel); and at any rate, they should be very closely scrutinized. It is undeniable that, in spite of the literary charm of Stowell's opinions and of the care with which he polished them, they are often elliptical and sometimes awkward.⁴³

We may now disembarrass ourselves of these perplexing preliminary phrases of Lord Stowell's, which after all amount only to a rather summary clearing out of the way of a bad argument, and come to the real gist of the case. There were four ships which showed that Mr. Ostermeyer had more or less to do with Ostend, and we shall see what it was.

In the first place, Stowell expressed a doubt as to whether the partnership had ever really been dissolved. Mr. Ostermeyer had never notified a dissolution, nor protested against Mr. De Coninck using his name as the leading member of the firm. A letter was found on board *The Frau Louisa* in the names of both individual partners; again, it seemed hard to believe that an exact settlement of the retiring partner's share should have been effected so rapidly *in specie* as was asserted in the deed of dissolution. But apart from all this, what is more to our present purpose, the question arose of whether Ostermeyer had not assumed the position of a sole trader at Ostend. Here is our important point.

"I do not say," says the judge, "that Mr. Ostermeyer might not trade to Ostend from his new residence, as any other person might; but I think it is a circumstance open to just remark, that the tide of his commerce should have set so much that way, to the very place from which he had emigrated in apprehension and disgust; and I think it does raise a strong suspicion, that he had yet an interest there, and that he had still a root left behind."

This is good rhetoric, but it does not tell us much about concrete details. And it will be remembered that it is all directed to the case of a technically belligerent merchant obtaining a neutral domicile. It does show that the *volume* of trade in a given center is a weighty factor in determining whether a house of trade exists there; also that permanent and exclusive agents are not, perhaps, essential. More instructive is the fact Mr. Ostermeyer's explanations were finally accepted as sufficient, and *The Frau Louisa* and *The Jonge Isabella* claims restored. In his successful affidavit it was stated that he "carried on his trade from and to Ostend, solely in the character of a neutral merchant established at Blankanese, and having his counting-house at Hamburg, . . . and that he had no share whatever in any house of trade at Ostend, but only corresponded with different houses of trade at that place as neutral merchants, residing in neutral places, are accustomed to do." We are left in the dark as to what the

⁴³ The same qualities are found in another author who polished and re-polished, Campbell, the author of *Gertrude of Wyoming*. When he wrote rapidly he was clear and forcible. His touchings and re-touchings render him obscure to a degree.

result would have been had he maintained a counting-house or an exclusive agent at Ostend. His "correspondents" must have been to some extent agents, or it is not easy to see how he bought his cargoes.

So what we have got from *The Portland* (really, *The Frau Louisa*) is this. It does not identify one with the enemy country to send ships regularly but not exclusively to the same port there for cargoes, and to purchase cargoes through miscellaneous agents in that port and put them on board for export to other countries. And this, although the merchant was formerly domiciled in the enemy port, and removed there *flagrante bello*, provided, at any rate, that he took the earliest opportunity of departing, and was not an enemy subject by allegiance.⁴⁴

We tabulate the ships and their voyages:

Portland. Hamburg to London. Claim for part cargo.

Spazamheid. London to Emden. Claim for part cargo.

Jonge Ferdinand. Spain to Hamburg. Claim for part cargo.

Hoop (Prussian). Amsterdam⁴⁵ to Bordeaux. Claim for part cargo.

Juffrouw Alida. Claim for part cargo.

Jonge Isabella. Ostend to Brest. Claim for ship and cargo.

Jonge Emilia. Dunkirk to Bordeaux. Claim for ship.

Frau Louisa. Ostend to Bilbao. Claim for ship.

Floreat Commmercium.

THE JONGE EMILIA (3 C. Rob. 51). I think Mr. Ostermeyer was lucky. He got his *Frau Louisa* and his *Jonge Isabella* back, the latter with cargo, and probably *The Juffrouw Alida*, shipment as well. But he finally lost

⁴⁴ The case of *The Portland* is peculiar, as it is not the case of a whole country becoming hostile (as Holland did, in *The Indiana*). It was only a certain part (though an integral part) of the Austrian Dominions, that was occupied by the French troops, causing these particular localities to bear a hostile character. It may be doubted, therefore, whether Mr. Ostermeyer ever had, even momentarily, a hostile domicile. His imperial domicile would subsist until he either evinced an intention of remaining under the French occupation, or of emigrating to a third country. [The contrary hypothesis, that persons domiciled like Mr. Ostermeyer at the particular place invaded, sustain an instantaneous and involuntary (if temporary) change of domicile upon invasion, seems to offer inseparable difficulties. One is not domiciled at a town, but in a country. You may be domiciled in France though you may never mean to spend a week in any particular French town. Another possible hypothesis, that persons domiciled in the country invaded and resident at the place invaded, change their domicile, is obviously inconsistent with principle, as long as domicile is maintained as the criterion.] And he lost no time in removal, thus clearly showing that he did not mean to remain under the new régime. Mr. Sontag's character, on the contrary, must have remained Dutch, and consequently hostile, until he quitted Holland for Altona.

⁴⁵ It is worthy of notice that no importance seems to be attached to the fact that Amsterdam was also under French occupation in 1798 when this ship was taken. A house of trade, unlike a domicile, is established, not in a country, but in a town.

The Jonge Emilia, on the ground that she had been altogether left in the hands of French merchants and employed for seven consecutive voyages in the trade of France, etc. This is on the lines of *The Vigilantia* (*supra*). Is it unlawful to charter a vessel to an enemy? Certainly not. Is it unlawful to do it again seven times? The inference seems to follow from the judgment; but what was its ground? Of course, a French merchant will carry on the trade of France, but the stress laid on the "seven times" seems to show that the mere charter to a French merchant does not, of itself, identify the vessel with French trade. It is the constant employment (commencing after the outbreak of war), of the vessel in trade to and from France, with French produce and the imports of domiciled Frenchmen, that apparently makes her true owner's employment of her one of the mercantile activities of France. This is just *The Vigilantia* over again.⁴⁶

THE JOSEPHINE (4 C. Rob. 25). This case, decided on July 14, 1801, does not really seem to turn on house of trade, but on domicile. Otherwise it would be good authority for the as yet unsupported proposition that neutral-domiciled merchants carrying on a house of trade in a country which becomes belligerent with no partners domiciled there, cannot continue it *post bellum exortem*, except as belligerents *quoad hoc*. But clearly, I think, Mr. Skipwith, the proprietor in that case, was personally domiciled in Paris, where he was American consul.

THE MADONNA DELLE GRACIE (4 C. Rob. 195). This case is only noted on account of a curious confusion between trading with the enemy and having a house of trade in the enemy's country. Escott had wines at Malaga, and Gregory at Barcelona. Both quitted Spain, and after some time exported some of their wine. Escott's was condemned,⁴⁷ and Gregory's released. All the reasoning of the former case, as to the danger of improper communications which would arise, if trade were allowed with the enemy, seems to apply to the latter also, yet the shipment in *The Madonna delle Gracie* was released (Feb. 10, 1802), on the ostensible ground that Gregory was not a trader, and had no house of trade in Barcelona, but merely stocked wine there for the use of the Mediterranean fleet. It is impossible to reconcile the reasoning of the two cases, and one is driven to the conclusion that *The Madonna delle Gracie* was wrong. There is just one little light, at the close of the judgment, tending to identify a "house of trade" with bricks and mortar. Commenting on the asserted fact that Mr. Gregory had not given up his Barcelona house, Stowell says, "this was nothing more than his own mansion and not a house of trade." Such an idea was afterwards repudiated in *The Jonge Klassina*.

⁴⁶ See *The Juffrouw Elbrecht* (*supra*) and *The Jonge Ruiter* (*infra*), where mere employment in belligerent trade, without charter, was held in the circumstances insufficient to condemn. In *The Vigilantia*, there was indeed no charter, but much identification in the nature of the traffic. ⁴⁷ *The Hoop* (1 C. Rob. 203).

THE HERMAN (4 C. Rob. 228). This is one of the most important cases on the subject. Mr. Rudolf carried on business at Emden and in London. Was he a London merchant or an Emden one?

Mr. Rudolf was much in transit between the two places. He was domiciled in Emden, but had resided in London up to 1796. He was by birth a Hanoverian. At the time of shipment he was in London, but transiently. It is unfortunate for science that the two houses were obviously quite distinct. In London Mr. Rudolf was a partner with Mr. Living; in Emden he was established on his own account, and the Living partnership had not the least interest in the Emden affairs. As an Emden neutral merchant, he ordered cheeses to be laded at Amsterdam, and consigned to the London establishment, but not so as to confer any interest on them. Stowell held that this was not trade with the enemy (March 19, 1802). The London house was not concerned in the transaction, except as possible agents. The mere fact that Mr. Rudolf was a partner in a London firm did not, any more than in Ostermeyer's case, make him an Englishman in his affairs unconnected with that house. And his momentary presence in England (if such were the fact), made no difference. "I cannot think that a person being in London on such an occasional errand, and giving orders, during his stay here, for a shipment in the enemy's country on account of his house at Emden, would, on that account, . . . render [his property] liable to be considered as British property, engaged in trade with the enemy."⁴⁸ That is to say, the Emden trader had not established a house of trade in London merely because he was there momentarily, ordering goods to be sent thither, to be received by a different firm of which he was an influential partner. Nor was the transaction undertaken by the latter firm, so as to make the transportation an act of trading with the enemy.

This case will readily be distinguished from those that immediately follow, by the fact that a substantial interest and business was shown to exist in the neutral country. Where there is such a substantial business, it will be comparatively easy to represent the transactions, even of its partners, in the belligerent country, as modes of its activity, essentially neutral rather than belligerent.

THE DREE GEBROEDERS (March 25, 1802, 4 C. Rob. 232). This throws a most useful light on what amounts to engaging in the trade of a belligerent country. Mr. Grant, an American, came, as Mr. Murray did,⁴⁹ to Europe to look after his debts and to reclaim some property from France, as also to take back his wife and family who had been in England for the children's education. This was in 1798, but as Mrs. Grant declined to hazard the risk of capture by French cruisers, Mr. Grant, instead of going

⁴⁸ This seems to discredit the modern proclamations which fulminate against the trade with persons "being in the enemy's country."

⁴⁹ *The Bernon, supra.*

to America, went to France⁵⁰ (Feb., 1800), to recover his debts. Unable to remit the proceeds, he bought vessels and cargoes which he sent to England, a startling proceeding at first blush—but after all, what is to prevent an American merchant from sending his own goods in his own ship from one friendly port to another? And the transaction might have passed, and did pass, when two of the ships were captured in the Channel. But Mr. Grant, encouraged, went farther. After visiting England he returned to France, got in more debts, and bought butter to send to Lisbon. This did for him. “What is this but a voluntary mercantile speculation in the enemy’s trade? It is not the case of a man withdrawing his property to England, but engaging in new speculations, and standing on the same footing as any other merchant in the country of the enemy.” Yes, but may not an American merchant trade with France? Must every neutral in France put up his shutters at the outbreak of war? Is he not allowed to buy butter, in his character of a Philadelphia merchant, with the proceeds of sales made by him in that character? And if he buys it, is he not allowed to send it to a market? Seemingly not, though it is not clear what he is to do. He can buy bills, but why are bills better than butter? Would the result have been the same if the butter had been destined for the seat of his trade in Philadelphia—or for *any* American port?

Stowell reinforces his decision, though disclaiming all necessity for reinforcement, by observing that Mr. Grant had ceased to act as a general merchant of America, confining himself to the shipment of the produce of his estates. “A person confining himself to the shipment of the produce of his own estate does not stand exactly on the same footing as a general merchant, retaining a mercantile domicile,⁵¹ by his house of trade.” Would that apply to a manufacturing exporter, and tend to restrict his permissible dealings in belligerent countries? Or is the situation of a landed proprietor so far removed from vulgar trade, that it has no analogy to the position of a manufacturer? At any rate, Mr. Grant’s mercantile connection, if any, with America “hung by a mere thread.” “This is a transaction not originating in any purpose of remitting his funds to . . . America, but in an independent mercantile speculation from Cherbourg to Seville, or Lisbon. It is, I think, not entitled to be considered in an American character.”

It is important, however, to notice that Stowell expressly refrained from pronouncing that the claimant was a French merchant. He only decided that he was not acting as an American merchant. He might be a

⁵⁰ The packet service between Dover and Boulogne remained uninterrupted throughout the war.

⁵¹ *I.e.*, retaining the power to represent his goods as concerned in the transactions of a substantial business in a neutral country, although the actual *locale* of the transactions may have been in a belligerent one. This is the only use (I think) of the term “domicile” by Stowell.

British merchant and, in such a case, the transaction was trade with the enemy. It is a little inconsistent to be, on the one hand, so sure that Mr. Grant was "standing on the same footing as any other merchant in the country of 'the enemy,'" and, on the other hand, to reserve the possibility of his standing on the same footing as any other merchant in Britain. In spite of Stowell's disclaimer, it seems reasonably clear that he was regarded as carrying on either a French or an illicit British trade, not because he might not buy butter and send it abroad for the benefit of an American business, but because he had practically ceased to have any commercial status in America. His house of trade was under his hat; if he took his hat to France, then it did not take much to infer that the house went with it.

This case, therefore, supports our proposition that, if no substantial commercial establishment exists in the neutral country, it will be difficult to prove that the place where business is actually done is not the *locale* of a house of trade, and this, even if the volume of the business is very small and the circumstances special.

THE VRIENDSCHAP (Feb. 2, 1802, 4 C. Rob. 166). Here, as in *The Anna Catharina* (*infra*), we find the phrase "having a house of trade" used of a sole proprietor. Stowell lays down the usual rule that a person engaged in the navigation of Dutch ships must be considered Dutch, and adds the curious rider that this will affect other trade of his which has "no distinct national character." He says:

I do not mean to say that, if he had a house of trade at Hooge [in Denmark], from which a trade was carried on to other ports of the north, his employment in Dutch navigation would necessarily affect that particular and distinct commerce; but it would, I think, spread its consequences over his affairs generally, and on such of his property as might be employed in a course of trade that had no distinct national character belonging to itself.

That is, the navigation of ships is not only analogous to the maintenance of a house of trade, it is almost equivalent to domicile. In fact, Mr. Barends' (the master's), career is examined from the point of view of residence; he is found to have been "very much resident in Holland," and it is observed that "it is not an occasional visit to Altona or Hooge that will continue his native neutral character . . . in opposition to a regular course of employment in the enemy's country and trade." This is a very singular hybrid situation. Unlike domicile, the employment of a master mariner does not confer on him a hostile character apart from his place of trade. Unlike house of trade, it does not extend beyond his actual business in the hostile country. This may fairly be regarded as a freak. I doubt whether Lord Stowell had completely analyzed the position, and probably it would be much more satisfactory to say that in the circumstances, the master had acquired a Dutch domicile. As a

matter of fact, apparently on his proving that he had ceased since 1798 to reside in Holland, his ship was restored.

THE ANNA CATHARINA (4 C. Rob. 107). It was noted above that in *The Liberty* (Zacharie, Coopman & Co.), *The Juffrouw Louisa Margaretha*, *The Hoop* and *The Jefferson*, the term "house of trade" was apparently used as implying a partnership. The present case (Aug. 3, 1802) shows, like the text, however, that this is not necessarily its meaning. The judge refers (p. 110) to Mr. Robinson, "now described . . . as *having* a house of trade . . . at Curaçoa."

For the rest, *The Anna Catharina* was a case of condemnation for embarking in the privileged monopoly trade of the enemy.⁵² But we proceed to cite from it some important observations on the position of persons trading to belligerent countries, and their risk of being considered merchants of those places.

They have a stationed resident agent in the Spanish settlement, for the very purpose of conducting this permanent commercial undertaking. It is not, indeed, held in general cases, that a neutral merchant, trading in the ordinary manner, to the country of a belligerent, does contract the character of a person, domiciled there, by the mere residence of a stationed agent; because, in general cases, the effect of such a residence is counteracted by the nature of the trade, and the neutral character of the merchant himself.

This is a cryptic and confused utterance, but it is plain that Stowell's meaning is that a principal domiciled in a neutral country will not be prejudiced by the residence and possible domicile of, or the trade done by his agent in an enemy country, provided it all comes under the head of trading "to" it. As a clear statement of that important point, it furnishes one of our most valuable points *d'appui*.

THE PHOENIX (Nov. 2, 1803, 5 C. Rob. 20). This well-known case is only cited for completeness, and for the emphasis which it places on domicile ("local residence"),⁵³ apart altogether from trade, as the criterion of national character. Westlake endeavored, on one occasion, to excuse the qualification of a general statement of Lord Stowell's (restricting it to "merchants"), by observing epigrammatically that he must have meant merchants, because "wherever there are cargoes, there is trading." But this case shows that it is not true to say that wherever there are cargoes,

⁵² But, in *The Vreede Scholtys* (Jan. 10, 1804, 5 C. Rob. 5, note), Stowell seems to think it doubtful whether the subjects of other Powers, who are, by exceptional favor, admitted to a *close* trade of a particular state, necessarily become affected with the belligerent character if that state goes to war. Perhaps there is a distinction between mere *close* trade and privileged trade—the latter bringing the trader into intimate relations with the government, and making the goods normally the property of the latter immediately on importation.

⁵³ The head-note speaks of the claimants as "personally domiciled"; the text speaks of "local residence."

there are merchants. A planter is not commonly termed a "merchant," though he sells his produce. The main point of the case, of course, is that the produce of the soil, exported by its owner, is affected by the character of the place. "The possession of the soil does impress upon the owner⁵⁴ the character of the country, as far as the produce of that plantation is concerned, in its transportation to any other country, whatever the local residence of the owner may be." Presumably this applies to mines, ranches, etc. To factories?

THE DIANA (Dec. 19, 1803, 5 C. Rob. 60). Here Stowell again insists on the necessity of an intention for "*permanent*" residence as conferring an enemy character. Mere "trading residence," therefore, is *not* (as Westlake seems to have imagined) prize-law domicile.⁵⁵

THE OCEAN (5 C. Rob. 90). This is not the well-known case of *The Ocean* (3 C. Rob.), on imblockaded canals, but one decided on Jan. 27, 1804. It shows that a person "settled as a partner in a house of trade in Holland" (and, we may take it, domiciled there), was at liberty to dissolve his partnership and withdraw his trade. Even though he was forcibly prevented from withdrawing his person, he could not be regarded as a Dutch subject. It may be noted, however, that he had ultimately escaped and returned to England; otherwise, one doubts whether he could have experienced the same leniency.⁵⁶

THE DOORNBAAG (5 C. Rob. 91, note). This shows that the party removing forthwith from the enemy or invaded country, may take his goods as well, without incurring enemy character. It is an interesting case, as it formed the basis of innumerable applications for the bounty of the Crown on the part of persons who did not fall within this lenient rule (Cf. Admiralty In-Letters, British Records Office, *passim*).⁵⁷

⁵⁴ Qu. "Possessor"? Would not the principle apply to a lessee or *bona fide* possessor?

⁵⁵ See Marshall's masterly analysis of this case and the *Boldes Lust* in *The Venus* (8 Cranch, 253).

⁵⁶ As to withdrawal on the outbreak of war, see *The Solde Hoop* (1 Acton 32), and especially per Marshall, C. J., in *The Venus* (8 Cranch at p. 306).

⁵⁷ Halleck (International Law, II, c. 23, §6) seems to deny that a domiciled enemy can quit his domicile in safety on the outbreak of war; and cites *The Venus* (8 Cranch). See this case *infra*. Cf. per Marshall, C. J. (*ibid.*). "I cannot admit that an American citizen who had gained a domicile in England, during peace, and was desirous of returning home, on the breaking out of war, but was detained by force, could, under the authority of [*The Indian Chief*] be treated as a British trader, with respect to his property embarked before a knowledge of the war" (p. 301).

(To be concluded in the next number.)

EDITORIAL COMMENT

THE FOREIGN POLICY OF THE UNITED STATES

During the past few years, especially since the entrance of the United States into the World War on April 6, 1917, the question has been much mooted whether the policy of interested isolation, which had characterized American relations from the earliest days of the Republic, was to be continued, or whether the United States would cease its isolation and take an active part in the world's affairs, not merely in its own interest, but in the interest of the states of the world.

Many there were who thought that conditions had changed to such a degree that the policy of other days should be consciously renounced for a policy more in harmony with what were thought to be the needs of the more modern world. The recent treaty between Germany and its enemies, concluded at Paris during the course of 1919, and signed at Versailles on June 28, 1919, by American representatives, pledged the United States to an active participation not merely in the affairs of Europe, but in the affairs of the world at large. This treaty was twice considered by the Senate of the United States with a view to its advice and consent, and twice that advice and consent were refused. The question was one, however, upon which it was thought advisable to consult the people of the United States directly.

The advantages and disadvantages of the Treaty of Versailles—of the old policy and of the new departure—were debated from one end of the country to the other, and United States Senator Warren G. Harding, of Ohio, was elected President, by 404 electoral votes out of a total vote of 531; and by a popular vote of 16,138,914, in a total vote of 26,661,606.

What is to be the policy of the new administration? For Mr. Harding is a Republican, the Senate is Republican, and the House of Representatives is Republican.

Of this administration Mr. Harding is the mouthpiece of the United States in foreign affairs, although a treaty or convention to bind the United States must be "by and with the advice and consent of the Senate," and then only "provided two-thirds of the Senators present concur." The President may propose: the Senate disposes.

On March 4, 1921, Mr. Harding, having taken the oath of office as President of the United States, stated that policy in so far as he was then able to declare it, and as it depended upon him to frame it, in the inaugural

address which he delivered to his fellow-countrymen from the steps of the Capitol.

In the first place, he seems to have stated in his own language, the policy to be found in Washington's farewell address to his countrymen, and in Jefferson's first inaugural address. Thus, in the first three paragraphs devoted to this phase of the subject, he said:

The recorded progress of our republic, materially and spiritually, in itself proves the wisdom of the inherited policy of noninvolvement in Old World affairs. Confident of our ability to work out our own destiny, and jealously guarding our right to do so, we seek no part in directing the destinies of the Old World. We do not mean to be entangled. We will accept no responsibility except as our own conscience and judgment, in each instance, may determine.

Our eyes never will be blind to a developing menace, our ears never deaf to the call of civilization. We recognize the new order in the world, with the closer contacts which progress has wrought. We sense the call of the human heart for fellowship, fraternity, and coöperation. We crave friendship and harbor no hate. But America, our America, the America builded on the foundation laid by the inspired fathers, can be a party to no permanent military alliance. It can enter into no political commitments, nor assume any economic obligations which will subject our decisions to any other than our own authority.

I am sure our own people will not misunderstand, nor will the world misconstrue. We have no thought to impede the paths to closer relationship. We wish to promote understanding. We want to do our part in making offensive warfare so hateful that governments and peoples who resort to it must prove the righteousness of their cause or stand cutlaws before the bar of civilization.¹

Mr. Harding did not mean, however, to convey the impression that the United States would stand aloof and refuse to enter into an association of nations. He sought to make clear in the next three paragraphs of his address, the kind of an association which he had in mind, and the purposes for which it was to be formed. Thus:

We are ready to associate ourselves with the nations of the world, great and small, for conference, for counsel; to seek the expressed views of world opinion; to recommend a way to approximate disarmament and relieve the crushing burdens of military and naval establishments. We elect to participate in suggesting plans for mediation, conciliation, and arbitration, and would gladly join in that expressed conscience of progress which seeks to clarify and write the laws of international relationship, and establish a world court for the disposition of such justiciable questions as nations are agreed to submit thereto. In expressing aspirations, in seeking practical plans, in translating humanity's new concept of righteousness and justice and its hatred of war into recommended action we are ready most heartily to unite, but every commitment must be made in the exercise of our national sovereignty.

Since freedom impelled, and independence inspired, and nationality exalted, a world supergovernment is contrary to everything we cherish and can have no sanction by our republic. This is not selfishness; it is sanctity. It is not aloofness; it is security. It is not suspicion of others; it is patriotic adherence to the things which made us what we are.

To-day, better than ever before, we know the aspirations of humankind, and share them. We have come to a new realization of our place in the world, and a new ap-

¹ Congressional Record, March 4, 1921, p. 2.

praisal of our nation by the world. The unselfishness of these United States is a thing proven, our devotion to peace for ourselves and for the world is well established, our concern for preserved civilization has had its impassioned and heroic expression. There was no American failure to resist the attempted reversion of civilization; there will be no failure to-day or to-morrow.

Finally, he completed this portion of his address in three further paragraphs:

The success of our popular government rests wholly upon the correct interpretation of the deliberate, intelligent, dependable popular will of America. In a deliberate questioning of a suggested change of national policy, where internationality was to supersede nationality, we turned to a referendum to the American people. There was ample discussion, and there is a public mandate in manifest understanding.

America is ready to encourage, eager to initiate, anxious to participate in any seemly program likely to lessen the probability of war, and promote that brotherhood of mankind which must be God's highest conception of human relationship. Because we cherish ideals of justice and peace, because we appraise international comity and helpful relationship no less highly than any people of the world, we aspire to a high place in the moral leadership of civilization, and we hold a maintained America, the proven republic, the unshaken temple of representative democracy, to be not only an inspiration and example but the highest agency of strengthening good will and promoting accord on both continents.

Mankind needs a world-wide benediction of understanding. It is needed among individuals, among peoples, among governments, and it will inaugurate an era of good feeling to mark the birth of a new order. In such understanding men will strive confidently for the promotion of their better relationships, and nations will promote the comities so essential to peace.

Mr. Harding's task during the ensuing four years will be, in so far as he deems it advisable, or conditions permit, to translate these words into facts. Whether it can be done, or how far it can be done, perhaps he himself does not know at present. It is a chart, as it were, for the Ship of State, should it put to sea under his guidance.

For the moment, both at home and abroad, all is expectancy.

JAMES BROWN SCOTT.

CHARLES EVANS HUGHES—THE NEW SECRETARY OF STATE

On March 4, 1921, immediately after the delivery of his inaugural address, President Harding stepped into the Senate of the United States, then in executive session, and himself laid before it the name and asked for the confirmation of Charles Evans Hughes as Secretary of State of the United States.

This was promptly done, and the other members of the Cabinet whose names President Harding had in like manner laid before the Senate were also confirmed. Mr. Hughes took the oath of office on the morning of the 5th, and entered upon the performance of his duties as Secretary of State.

Mr. Hughes is so well known to his fellow-countrymen that the account of his appointment might well stop here. The office is, however, a special one, and requires special attainments on the part of a successful Secretary.

It needs, in the first instance, a large experience in governmental affairs, for public business is usually on a different scale, and is generally conducted in a different manner from the ordinary business of private life. Mr. Hughes has had large experience with governmental affairs. He was Governor of the State of New York for almost four years—January 1, 1907, to October 6, 1910. As such, he came into constant touch with the legislature, and learned from experience how legislative bodies approach their tasks.

In the next instance, it requires a judicial mind. The claims of nations will pass across the desk of the Secretary of State—not merely the claims of the United States, but of foreign nations, and they must all be considered and decided according to the principles of law and of conduct which apply to all states, not to the favored few. The advocate is here out of place. Legal training is required, but it is the legal training which leads to just judgment. Mr. Hughes possesses the judicial mind, for from October 10, 1910, to June 10, 1916, he was a justice of no less a body than the Supreme Court of the United States.

In the discharge of his duties, Mr. Hughes passed not merely upon claims of individuals, but upon the claims of States, delivering the notable judgment, fixing in the sum of \$2,393,929.50, the share of the debt of Virginia which the State of West Virginia should pay, because of its separation from that State,—a judgment with which the State of West Virginia has since complied.

“Great states,” said his former colleague, Mr. Justice Holmes, in an earlier phase of the case, “have a temper superior to that of private litigants.”

In the third instance, it requires character. No man has ever accused Mr. Hughes of a lack of character, whether it be in the trial of a case in court, where every effort is strained for a verdict for his client, or in the politics of his State of New York, when he stood twice for Governor, and was elected, or in the United States at large, when he stood, in 1916, for the Presidency of the United States, and lacked but the vote of California to be elected. And no man in this largest of spheres, in intercourse with states which taken together make up the Society of Nations, will accuse him of a lack of character. What the United States should have, he will insist upon having; what the foreign nations should have of the United States, he will grant.

Mr. Hughes has lived in the atmosphere of judicial settlement from early manhood, and in the fullness of his powers, and in possession of the great office of Secretary of State, he may be expected to stand for the judicious conduct of international affairs as well as the judicial settlement of disputes between states.

JAMES BROWN SCOTT.

THE COSTA RICA-PANAMA BOUNDARY DISPUTE

Ever since Spanish control over the Isthmus of Panama ceased and the adjacent Central and South American countries became independent states, the location of their international boundary across the Isthmus of Panama has been the subject of dispute and negotiations almost continuously down to the present time.

It was believed that this boundary was definitely settled from Punta Burica on the Pacific to the Central Cordillera by the acceptance by both Costa Rica and Panama of that section of the boundary as defined in the 1900 award of President Loubet of the French Republic, and from the Cordillera to the Atlantic by the interpretation given the Loubet award by the 1914 award of Chief Justice White of the United States.

The recent action of Panama, however, in asserting title to Costa Rican territory, as defined by the Loubet award at the Pacific end of the boundary, has added a new chapter to this controversy.

This last phase of the long-continued controversy arises from a dispute as to the interpretation of the award of President Loubet under the boundary arbitration treaty of 1896 between Costa Rica and Colombia. Since that award was rendered Panama has become the antagonist of Costa Rica in this controversy, having succeeded Colombia as one of the parties in interest owing to their separation in 1902.

By the terms of the Loubet award the boundary was defined as follows:

The frontier between the Republics of Colombia and Costa Rica shall be formed by the counterfort of the Cordillera which starts from Cape Mona on the Atlantic Ocean, and closes on the north the valley of the river Tarire or river Sixola; thence by the chain of the watershed between the Atlantic and the Pacific to about the ninth parallel of latitude; it shall then follow the line of the watershed between the Chirique Viejo and the affluents of Golfo Dulce, ending at Punta Burica on the Pacific Ocean.

Neither Costa Rica nor Panama questioned the validity or the effectiveness of the award as to the boundary line established by it from Punta Burica on the Pacific coast to the point located on the Central Cordillera, but as to the line awarded from that point to the Atlantic coast, the Government of Costa Rica refused to accept the award. The principal objections urged by Costa Rica against the validity of the Atlantic section of the award boundary were that it extended for its entire length through territory which Costa Rica had always held in undisputed possession, and which consequently, by the terms of the arbitration treaty, was outside the scope of the arbitration, and also that the award was defective on account of the uncertainty and ambiguity and vagueness of the description of this section of the boundary which was confined merely to general indications of direction, and that the actual geographical conditions along the course of the line did not support the assumed conditions upon which

these general indications were based, and generally because the award line was not justifiable on the merits of the case.

The Government of the United States was drawn into the controversy regarding the Loubet award in its early stages, and finally, in response to the desire of both Costa Rica and Panama that it should lend its good offices in bringing about arbitration, undertook the part of mediator. The result of this mediation was the conclusion of a treaty in 1910 between Costa Rica and Panama for the submission of this dispute to the arbitration of the Chief Justice of the United States.

In Article I of this treaty it is recited that both parties considered that the boundary between their respective territories designated by the Loubet award "is clear and indisputable in the region of the Pacific from Punta Burica to a point beyond Cerro Pando on the Central Cordillera near the ninth degree of north latitude." No question, therefore, with respect to this portion of the line was raised or argued in the arbitration proceedings before Chief Justice White under the treaty of 1910.

It is further recited in Article I of the treaty that the parties "have not been able to reach an agreement in respect to the interpretation which ought to be given to the arbitral award as to the rest of the boundary line" and for the purpose of settling this disagreement, they agreed to submit to the decision of the Chief Justice of the United States the following question: "What is the boundary between Costa Rica and Panama under and most in accordance with the correct interpretation and true intention of the award of the President of the Republic of France made the 11th of September, 1900?"

The same article of the treaty which submits this question for decision, further provides that—

In order to decide this the Arbitrator will take into account all the facts, circumstances, and considerations which may have a bearing upon the case, as well as the limitation of the Loubet award expressed in the letter of His Excellency Monsieur Delcassé, Minister of Foreign Relations of France, to His Excellency Senor Peralta, Minister of Costa Rica in Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Costa Rica and the Republic of Colombia of January 20, 1886.

In the arbitration proceedings, Costa Rica and Panama differed as to whether or not the merits of the dispute submitted to President Loubet should be reexamined in order to determine the question submitted to Chief Justice White. Panama contended that the question submitted called for a mere verbal interpretation of the Loubet award. Costa Rica, on the other hand, insisted that the scope of the arbitration was enlarged beyond the mere interpretation of the Loubet award, in a verbal sense, by permitting the intention attributable to the former arbitrator to enter into the interpretation of the award, and by requiring the arbitrator in deciding this question to take into account all the facts, circumstances and con-

siderations having a bearing upon the case, thus insuring that the award should be reformed and the boundary fixed in accordance with the merits of the controversy.

It was also pointed out in support of the Costa Rican contention that the records of the negotiations resulting in the new treaty of arbitration, showed that both sides understood and intended at the time the treaty was made that the jurisdiction of the arbitrator was to go beyond a mere verbal interpretation of the Loubet award. Among the official records of these negotiations, which were presented in support of the Costa Rican contention, was a copy of a communication sent to the Government of Panama by Secretary of State Knox, acting as mediator in negotiating this treaty, in which he stated that "there was no intention to limit the boundary issue between Costa Rica and Panama to the mere interpretation of the Loubet award; that the United States thinks, and has stated, and now repeats that the crucial matter to be submitted to arbitration is the respective contentions of the two Republics, as to the true boundary line."

It also appears from an examination of the printed record of the arbitration proceedings that Panama admitted the necessity of going back of the Loubet award in order to determine the location of the boundary in certain contingencies contemplated by the terms of submission. One of these contingencies turned upon the question of whether or not the Chief Justice would support Costa Rica's contention that the Loubet award line extended for its entire length through undisputed territory of Costa Rica. On this point it was admitted in the Panama case that "if any part of the line fixed by President Loubet did, in fact, lie outside the limits fixed by the convention of 1886, that part would require modification and it would be necessary for the present arbitrator to substitute for it such line as he should determine to be 'most in accordance with' what he should find to be the true intention of the award."

It so happened that the precise contingency thus anticipated entered into the decision of this case. The arbitrator found, as a matter of fact, "that as the line of boundary fixed by the previous award from Punta Mona to the Cordillera was not within the matter in dispute, or within the disputed territory, it results that such award was beyond the submission, and that the arbitrator was without power to make it, and it must therefore be set aside and treated as non-existent."

It was, therefore, necessary for the Chief Justice to lay down a wholly different line, and pursuant to the terms of submission requiring the arbitrator to define the boundary "under and most in accordance with the correct interpretation and the true intention of the Loubet award," Chief Justice White fixed as the boundary the dividing line between the disputed territory and the undisputed territory, thus approaching, as nearly as possible, the line of the Loubet award which had to be discarded because it ran through undisputed territory.

Costa Rica accepted the award of the Chief Justice, although believing that on the merits of the question they were entitled to a much more favorable boundary.

Panama refused to accept the award, on the sole ground that the arbitrator had exceeded his jurisdiction in laying down a new line which did not conform to their interpretation of the Loubet award.

This objection of Panama to the White award was argued at length in an official communication from the Legation of Panama at Washington to the Secretary of State of the United States, dated October 20, 1914, and in view of the recent developments it is important to note that in the same communication Panama took occasion to reiterate its acceptance of the Pacific section of the Loubet award, which, as above stated, had been confirmed and accepted by both countries in the same treaty which had submitted the Atlantic section of that award to this arbitration. In this note it is stated that—

By the terms of the convention the line of the Loubet Award was recognized as binding upon the parties. As to about one-half of that line (from Punta Burica to a point beyond Cerro Pando), it was expressly stated that no question whatever existed, and that portion of that boundary is in no way involved in the present arbitration. It is and remains the boundary, not because the parties by agreement selected it, but simply and solely because President Loubet awarded it.

It is difficult to understand, therefore, on what grounds Panama bases her recent action questioning and attempting to repudiate the Pacific section of the Loubet award boundary from Punta Burica to the Central Cordillera.

If Panama persists in her present attitude of disregarding both the Loubet and White awards, and succeeds in having the whole boundary question reopened, it is quite possible that in any new arbitration on the merits, Costa Rica will obtain as the boundary on the Atlantic, under the controlling principle of the *uti possidetis* of 1821, the Chiriqui River, opposite the Escudo de Veragua, whereby Panama would lose all of the Atlantic coast which she gained under the Loubet award, including the splendid harbor of Boca del Torc.

By the treaty of 1903 between the United States and Panama, the United States guaranteed the independence of Panama, which places the United States in a special relation to this question, and imposes upon it the duty of determining the extent of the territory of Panama covered by this guarantee. If the United States is satisfied that the territory of Panama, to which the guarantee of independence applies, is bounded by the Loubet award line from Punta Burica on the Pacific to the Cordillera, and by the White award line from the mouth of the Sixaola River on the Atlantic, following that river and the Yorquin River to the divide between the Changuinola and Tilorio Rivers, thence to the Cordillera, the boundary dispute between Panama and Costa Rica could be definitely settled

by a treaty between the United States and Costa Rica (if Costa Rica should desire such an arrangement) guaranteeing the independence of Costa Rica, and specifying the boundaries of the territory so guaranteed.

CHANDLER P. ANDERSON.

THE FIRST ASSEMBLY OF THE LEAGUE OF NATIONS

So great an event as the First Assembly of the League of Nations requires notice in these pages. The Treaty of Versailles was signed on June 28, 1919, and under its terms a Secretary-General was named for the League, authorized to organize a permanent staff. By January 10, 1920, the necessary ratifications of the treaty had been deposited and the treaty, with the Covenant of the League contained in its first 26 articles, became operative. The Council of the League met six days later, and some ten times thereafter. The Secretariat was rapidly expanded, often the main consideration in public organizations, so as to include about 150 persons. Under the provisions of the League, the International Labor Organization held two conferences at Washington and Genoa. The jurists met at The Hague, the Finance Conference at Brussels, the Health Conference at London, the Passport Conference at Paris, etc. Few opportunities for "Conferences" were neglected and, as in case of Labor, they were often on a large scale and involved large expenditures. The Council of the League, representing four great and four lesser Powers only, stood sponsor for this activity. The Assembly of the League was delayed in the hope that the United States might participate. At last it was called to meet on November 15th at Geneva. A few days prior thereto the election in the United States, by an overwhelming vote, declared against the policies of President Wilson and against any ratification of the Treaty of Versailles without reservation.

The Assembly met at Geneva, November 15, 1920, at eleven o'clock. At the opening session, M. Hymans was chosen President by a large majority, after the attempt to make him President by acclamation had been defeated. His election was intended as a tribute to Belgium for her part in the great war. The further consideration that none of the great Powers cared to see the Presidency go to another great Power might be suspected, though not announced.

During nine months the Secretariat had prepared data for action, and this expedited the labors of the Assembly. The Covenant had been drawn by the Allied and Associated Powers, and the neutral nations had no participation. These, therefore, had their first opportunity in the international enterprise at the Assembly. Forty-two nations were entitled to representation. All were present by their delegates, except Nicaragua and Honduras. The Persian delegate only arrived after having suffered an attack

from bandits, in which his secretary was killed. There was a not unnatural disposition toward localism in the action of the delegates. The 16 Latin-American nations, the Asian, and Australasian contingent showed a certain solidarity, as when the latter two succeeded in placing China in the Council.

The analysis of the proceedings by Mr. Arthur Sweetser has been mainly used in this statement, though with frequent direct consultation of the full official record and publications. Mr. Sweetser says that "probably one of the most important results of the First Assembly will be to universalize the League, or rather to attenuate the interests throughout a wider world field. Immediately after the war and during the domination by the big Powers, the League was tempted to focus too closely on European problems and to neglect the extra-European viewpoint. This tendency received several rude shocks during the Assembly, especially when the British Dominions attacked the budget and Canada protested against too frequent conferences at a distant center." Thus the little problems as those of "Eupen and Malmédy," which showed largely in the agenda, were not mentioned, and those like the "Tacna-Arica" dispute and the Shantung question loomed up to importance.

In positive legislation the Assembly dealt with its own secretariat, but "super legislation" as to affairs in general was conspicuous by its absence. The notable example of this was in the action as to a Permanent World Court. The Assembly was urged to establish such a tribunal by its own action, without submitting the scheme for ratification to the Powers themselves. It wholly refused to take this course and merely unanimously approved the scheme adopted for submission to the states. The Assembly asked the three Scandinavian Powers and Holland if they would be willing to send small forces to keep order at Vilna during the plebiscite. Sweden alone acceded without condition.

The delegates had been, in the main, instructed beforehand by their governments as to the agenda, and as to new matters arising they largely consulted their home authorities by cable and telegraph.

The Assembly in no way undertook to execute the Treaty of Versailles. It admitted all neutral states and two enemy states to its membership, and its main labors were bestowed on self-organization. It decided to meet at least annually, and regularly to assemble on the first Monday in September.

Officers of the Assembly

M. Paul Hymans of Belgium was named by the Council temporary presiding officer and was elected President. The President of Switzerland, M. Motta, was chosen Honorary President of the Assembly. A general or steering committee was constituted, consisting of the President and 12 vice-presidents. The names included are eminent names: M. Paul Hymans of Belgium, Rt. Hon. A. J. Balfour of Great Britain, H. E. Tomaso Tittoni of Italy, H. E. Léon Bourgeois of France, H. E. M. Quinones de Léon, of

Spain, Señor Don Antonio Humeus of Chile, H. E. M. Branting of Sweden, Viscount Ishii of Japan, M. Jonkheer Van Karnebeek of the Netherlands, H. E. Dr. Honorio Pueyrredon of Argentina, who was replaced December 11th by M. Blanco of Uruguay on the withdrawal of the Argentine delegation; H. E. Dr. Edouard Benes of Czecho-Slovakia, Sir George Forster of Canada, and H. E. Dr. Rodrigo Octavio Langaard de Menezes of Brazil.

The work of the Assembly was divided between six committees as follows:

1. General Procedure and Amendments.
2. Technical Organization.
3. Permanent Court of International Justice.
4. Secretariat and Budget.
5. Applications for Admission.
6. Disarmament, Mandates, and Economic Blockade.

There were about 40 representatives on each committee, one from each state, and these committees were centers of private debate. Their conclusions were generally supported by the Assembly, but not always, as in the admission of Albania.

The rules of procedure, as drafted by the Secretariat, were, in the main, adopted. By their provisions, cloture may be ordered by a majority, but all decisions, other than as to procedure or when otherwise provided by treaty, must be by unanimity.

There were 30 sessions of the Assembly, and all were public and fully and promptly reported to the press.

Fourteen nations applied for admission. Six were admitted to membership, four others to participate in the technical organizations as a step toward membership, and four were, for the present, refused. Austria and Bulgaria were the only enemy states applying for membership and both were admitted. Four states, formerly parts of Russia, Esthonia, Latvia, Lithuania and Georgia, on account of the menace of Soviet Russia, though admitted to the technical organizations, were not admitted to full membership in the League. Armenia, Azerbaidjan, the Ukraine and Lichtenstein were refused admission. The League thus increased its membership to include 48 members and four partial members.

The Assembly and the Council

There were important differences as to the relationship of the Assembly and the Council of the League. The Peace Treaties entrust certain matters to the Assembly and certain other matters to the Council. Many matters appropriate for the action of the League are not specifically assigned to either. The Council was designed, as is apparent, to consolidate control in the hands of the great Powers and the four little Powers were to be always in the minority when the great Powers agreed. The United States, how-

ever, having so far omitted to ratify the treaty or join the League, her seat on the Council continues vacant, and great and little Powers each have four votes, and this has much strengthened the influence of the lesser states. There seems to have been much feeling as to whether the tail should wag the dog or the dog should wag the tail, whether the small Council should control the big Assembly, or *vice versa*. There can be no doubt that in the long run the axiom that a part is less than the whole cannot be ignored. In the meantime, the Assembly adopted unanimously, as Mr. Sweetser says, "a long analytical report which laid down the principle that while each party should be supreme in those matters especially assigned to it, in all other matters neither body should interfere with a subject which has become the special charge of the other." It cannot be thought that this is a satisfactory, complete, and final settlement. In the first place, it is the act of one of the two contesting bodies and not of both, even though the members of the Council sat in the Assembly. The Assembly is the great council of the League in which every member is directly represented. If the Council, in which eight Powers, or one-sixth of the entire membership, are directly represented, can override the Assembly, it will be a situation so anomalous that it must be temporary. There exists, apparently, and the "analytical report" intimates this, no supreme authority to decide between the claims of the two bodies. The organization seems to have points of resemblance to the Constitution of the United States with the Supreme Court omitted. The adjustment is temporary and imperfect. It will take its place among the many compromises which great combinations seem to entail. The only serious conflict which in fact arose, however, seems to have been precipitated by Lord Robert Cecil's and Dr. Nansen's pressure upon the Council as to the lack of action on Mandates.

Mandates

On December 18th the Assembly adopted the following *Recommendations regarding the Mandate Commission*:

- (1) The Members of the Commission should not be dismissed without the assent of the majority of the Assembly.
- (2) The Commission should contain at least one woman.
- (3) The Mandatories should be asked to present to the Commission a report on the recent administration of the territories now confided to their care.

Recommendations as to Mandate "A."

- (4) The Mandatory should not be allowed to make use of its position to increase its military strength.
- (5) The Mandatory should not be allowed to use its power under the Mandate to exploit for itself or its friends the natural resources of the Mandated Country.
- (6) An organic law should be passed in the mandated territories as soon as possible and before coming into force, should be submitted to the League for consideration.

General Recommendations.

- (7) Future draft Mandates should be published before they are decided on by the Council.

Lord Robert Cecil, in presenting these recommendations, "drew attention to the fact that no definite proposals were put forward with regard to Mandates B and C. These mandates could be very little more than a repetition of the conditions contained in the Covenant, since the mandated territories were to be administered as part of the territory of the Mandatory."

These provisions and suggestions apply to the Mandate of Japan over the Island of Yap and are significant in the discussion arising as to the same.

Mr. Arthur Balfour, in rejecting any idea of control of the Council as to Mandates to be exercised by the Assembly, said that "As the representative of Great Britain in the Council, he must regard himself as absolutely free to consider these problems on their merits, unrestricted by anything which the Assembly might do on that day or on any other day." He said the Council had refused a representative to labor on the committee and intimated that it must, therefore, refuse it to women, and that the Council must decide. He said "The problem of the Mandated territories was extremely difficult. It would not conduce to the final success of this experiment if the only view of the League of Nations was that the Mandatory Powers should have all the responsibility and all the *trouble and none of the benefit*." It must be noted that M. Bourgeois of France "wished to associate himself entirely with the observations made by Mr. Balfour," but followed with conciliatory words. Mr. Balfour, moreover, said that the Council alone was charged with carrying out the clauses as to Mandates; that the Assembly would take such action as it saw fit, but this action would be considered by the Council only as a matter of courtesy and not at all of right.

The general effect of the Assembly, Mr. Sweetser thinks, was to add energy and liberality to the Council, which inclined to paralysis and conservatism. It is notable that the Assembly in every resolution adopted left to the Council all executive duties thereunder. The Scandinavian countries sought to provide some scheme of rotation for the representation of the little countries in the Council. This proved too intricate and difficult for adoption. The four places of small countries in the Council went, first to Spain on account of her neutrality, and even more on account of her close relation with the Latin-American Powers; secondly, to Brazil as a leading South American State. There was a very hot contest as to the two remaining places, which Belgium and Greece had held. Finally, Belgium was chosen, largely as a tribute to M. Hymans, and, on the fourth ballot, to the general astonishment, China was chosen. Mr. Wellington Koo, late Minister of China at Washington, had strongly pressed for the placing of a lesser Asiatic state habitually on the Council. Australia and New Zealand joined the Asian nations, which were led by Japan. Canada and several South American States also joined them, and victory was won. The Council is therefore made up for this year of representatives of five Euro-

pean Powers, Great Britain, France, Italy, Spain and Belgium; of two Asiatic Powers, Japan and China, and of one American Power, Brazil. Northern Europe, Central Europe, Eastern Europe, all Africa (in its own right), and all North and Central America are omitted. All South America is represented by one vote.

It ought to be observed that China alone was reported as favoring the claims of the United States in the Council in dealing with the Mandate over the Island of Yap.

Treaties

The registration and publication of treaties is an important function of the League. Before the adjournment of the Assembly, 69 treaties had been registered, among them 15 from Great Britain, 12 from Germany, and nine from France. The first treaties of the United States to be registered were agreements with Sweden for extension of copyright, and modification of consular agreements. The United States, not being a member of the League, did not submit them for registration, but Sweden did. This must be the case with our treaties in general. The other party will be a member of the League and bound by its requirements.

Economic Blockade

The Committee on Economic Blockade (the weapon of the League against states breaking their covenant in the matter of war) reported so elaborately that action was postponed and a committee to report through the Council to the next Assembly was provided for.

Amendment of the Covenant

The Scandinavian Powers had long advocated amendments providing for an annual meeting of the Assembly, rotation among the lesser Powers represented on the Council, relaxation of economic blockade in certain cases, and wide extension of arbitration. Canada proposed to the Assembly the elimination of Article X, to which she and the United States Senate were especially hostile. Argentina proposed that it be made possible for all sovereignties to join the League. It was finally agreed, however, with substantial unanimity, to appoint a Committee on Amendments and await its report at the next Assembly. The committee was apparently to be chosen by the Council. The representative of Argentina had voted alone against this arrangement, and at once, on its adoption the Argentine delegation issued a simultaneous note to the President of the Assembly and to the press, withdrawing from the Assembly.

The provision requiring an Annual Assembly was incorporated in the rules of procedure.

On the amendment eliminating Article X from the Covenant, no vote was taken, but there was apparent willingness to interpret the article so as to meet the objections put forward in the United States.

The Committee on Admission of States expressly declared that this article "does not guarantee the territorial integrity of any member of the League." All members of the League have been notified, under a decision of the Council, to submit amendments not later than March 31st. While it may be very well to do so, the question at once arises, how does the Council obtain the right to limit the members of the League in their transactions with that body or its committee? The presiding officer very commonly appoints a committee, as the Council chose this committee, but he has no authority to prescribe its actions or its relations with the body which directs its creation. It has been much suggested that through this Committee on Amendment an agreement with the United States may be reached, subject always to ratification by the Senate, on the one hand, and by the Assembly of the League on the other. Of course, the participation of the President on the part of the United States in such adjustment under our Constitution would be as essential as that of the Senate.

A committee, appointed therefor, examined into the Secretariat and Budget, holding 12 sessions for that purpose. The result was in the main approval, but with certain suggestions of change. Very warm criticism as to the ample salaries provided was heard, especially from India, New Zealand and Australia. The committee, however, advised no change in them. The committee recommended a five-year limitation on the tenure of members of the Secretariat, but the Assembly rejected this suggestion on the ground, apparently, that if it were adopted, it would be difficult to get good men to serve.

Budget

The budget for 1921 required 21 millions of gold francs, including 7 millions for the Labor Office. Notwithstanding criticism, by India, New Zealand, and Australia, it was approved. Resolutions to speed up the states in paying their quotas and, also, guaranteeing economy, were adopted.

Allocation of Expenses

By the Covenant, the expenses were allocated to the member nations on the basis of the International Postal Union system. This expedient, which had been thought very clever, proved improvident, as that system was unscientific and haphazard. It was debated whether the Covenant be amended or the Postal Union be induced to improve its system. The latter plan, being believed more feasible, was, therefore, adopted and the Council was requested to appoint a committee to seek to procure such reformation. This indicates the difficulties found in any modification of the Covenant.

Reduction of Armament

The menace of Russia, the anticipation (since confirmed) that military demonstration might be required to force Germany to agree to reparation

as demanded, and the action of the United States in proceeding to increase its armament, seem to have discouraged the Assembly as to this matter. It may be noted, however, that Great Britain, Japan, and other Powers were proceeding quite as energetically as the United States to increase their naval strength. The Covenant gives the League the power of enquiry and recommendation as to armament, and no more. The Council in August last created a Permanent Military, Naval and Air Commission. This commission, made up of Army and Navy officers of the represented states, drew up proposals for interchange of military and naval information, pursuant to the Covenant. In November they asked the Council to request the United States to send a representative to sit in consultation with them. The Council, accordingly, December 1st, asked the United States to name such a representative without committing itself to anything. President Wilson declined to appoint such a representative, not feeling justified while the United States was not a member of the League.

Recommendations were adopted by the Assembly asking the Council, 1st, to submit, for acceptance, to members of the League an undertaking not to exceed the current military budget during the next two years, except at the request of the League or under exceptional circumstances; and 2nd, to request the Permanent Military, Naval and Air Commission to complete its technical examination as to the present condition of armaments, and to instruct a temporary commission of experts in political, social, and economical matters, to submit proposals for reduction of armament, and also to provide for the publication, exchange, and verification of military information; to initiate the investigation of the private manufacture of munitions; and to consider international control of traffic in armaments. The Assembly declared its approval of the Convention of St. Germain for the Control of the Trade in Arms and Ammunition. The United States, it should be added, is now the greatest exporter of arms among the nations.

The Permanent Court

The paramount achievement of the League is believed to be the practical completion of the Permanent Court of International Justice. The plan was adopted by a unanimous vote of the Assembly, and ere a year passes it is hoped the court will be sitting permanently at The Hague. Under the Covenant of the League, the Council appointed a Committee of Jurists, which met at The Hague during the last summer and sat for some five weeks. Mr. Root and Dr. James Brown Scott, not by appointment of their government, but upon invitation, participated. The findings of the committee were severely modified by the Council and thus altered were recommended to the Assembly. A full committee of the Assembly considered them and recommended further changes. The project, thus modified, was adopted by the Assembly. It was then referred to the several nations for ratification.

The modification by the Council and Assembly of the project (1) did away with compulsory adjudication as to nations, though a protocol was adopted by which states, so desiring, may adopt the principle as in the original project or with this modification; (2) the Assembly decided that ratification of the project by the individual states was requisite, and that the court should come into being on ratification by a majority of the members of the League.

Members of the League who do not ratify will then be bound, and subject to the obligations imposed and entitled to the rights provided. The League will meet the cost of the court. The delegates of 22 states, before the Assembly adjourned, signed the protocol prepared by the Council for signature, a number just sufficient to establish the court, if the nations thus represented ratify. Representatives of all four of the great allied Powers and the delegates of four lesser Powers signed the protocol for compulsory adjudication. The court will have eleven judges, chosen for terms of nine years. A list of names is to be submitted, mainly prepared by the Hague Court of Arbitration. This list is voted on separately by the Council and the Assembly. Those chosen by both constitute the court. This would seem an ideal system for securing a body of great maturity, not to say senility. Young men can seldom hope to be known to these three bodies, namely, the Hague Court, the Council, and the Assembly. It is, however, like our Constitution, a compromise. The great Powers prevail in the Council, and the lesser Powers in the Assembly. A candidate who satisfies both, wins. Any nation desiring may ratify the ordinance creating this tribunal, and share its benefits. Thus, the United States may participate in every way without joining the League.

Technical Organizations

It was proposed to create three commissions, autonomous, but subject to the Council and Assembly, each with a staff and an annual meeting, to carry on the international work as to health, transit, economics, and finance.

Mr. Rowell of Canada sharply attacked this project, as creating such an elaborate and expensive machinery, and as calling for so many conferences remote from many of the countries involved. These organizations were thereupon given a temporary and advisory character for this year, leaving their status to be fixed at the next Assembly.

The Committee on Economics and Finance grew out of the Brussels International Conference. It will consider the application of the recommendations of that conference, and prepare the agenda for the next international conference which the Council may summon, and may examine economic and financial problems submitted to it.

The Committee on Freedom of Communication and Transit was to be organized at Barcelona February 21st, and the question of transit as a

matter of economics will be examined and agreements drafted, and regulations for the international régime of ports, waterways and railways, under Article 23 of the Covenant, will be drawn up. The United States has been invited to participate in this Conference.

The International Health Organization

This results from health conferences held under the League. It is to coördinate international health organizations and coöperate with the Labor Organization, the Red Cross and kindred societies in interchange of information, in suppressing epidemics, and is to draft international health conventions.

Mandates

Some 13,000,000 people have been freed from German and Turkish rule by the peace treaties. Agreements between the Allied Powers as to the terms of the mandates for their government to be submitted to the League have proved impossible. Germany claimed that the provisions of the Covenant were not being carried out as to mandates and that she must reserve liberty of action as to the colonial settlement. It was reported that the United States had sharply complained to Great Britain that the principles of the mandates had not been adhered to in Mesopotamia.

The Assembly, late in its session, November 29th, agreed upon a plan for a Permanent Commission on Mandates, with nine members appointed by the Council, the majority being required to be from non-mandatory Powers.

The feeling of the Assembly is reported to have been strong that the Assembly, as the combined representative of all League States, ought to have a certain control and oversight, and plainly the right of criticism and review. Before the Assembly closed, Mr. Sweetser says, the whole of the question as to mandates "had been put in the hands of the League, where it belongs." It cannot be said that it passed into the hands of the Assembly. The Council proved, as we have seen, tenacious of its exclusive rights.

The First International Force

Poland and Lithuania had long disputed as to their boundaries. The dispute was referred to the Council of the League, which examined it in detail. A commission of the League was "actually on the spot," as Mr. Sweetser says, when General Zeligonski made his "spectacular raid" into the region of Vilna. The Council made representations to the Government of Poland, which disowned the act of the general. Finally, a settlement by plebiscite was proposed, to be held under the auspices of the League. Both countries accepted, and when the Assembly met only the methods of carrying out the agreement remained to be determined. The preservation of law and order in a large region after the Polish and Lithuanian

forces had withdrawn presented some difficulties. The Council decided to ask certain members of the League if they would send a small force into the territory involved to preserve order during the election. Great Britain, France, Belgium, and Spain agreed to furnish their portion. Italy and Greece took time to consider. Eighteen hundred men was the maximum force planned for, and to give it a still more impartial complexion, the Council invited the three Scandinavian states and Holland to participate in forming the expeditionary forces, they being all neutral Powers in the Great War. Norway and Sweden promptly accepted the invitation, and Denmark replied that the matter required legislative action. The Government of Holland introduced legislation to provide for compliance, and this met with strong socialist opposition. Sweden agreed to send 100 troops, Norway the same number, if they volunteered, Denmark and Holland, if they got adequate legislation therefor.

The action of the Assembly and the several Powers is regarded as a precedent for the right of the League to *request but not to order* members to send forces to preserve peace and for such members to *accept or refuse the request as they will*.

Armenia

Action as to Armenia was not on the agenda of the Assembly, but action as to it was called for by liberal leaders. The Assembly by resolution created a committee of its own on the subject, and by another resolution asked the Council to approach the nations of the world with the view to end hostilities in Armenia. As a result of the Council's action, the United States, Spain and Brazil agreed to use their good offices in the matter.

Typhus in Poland

Typhus had prevailed in eastern Europe for over a year, and threatened to spread to the rest of the world. Poland's disordered resources were wholly inadequate to combat it, and the matter came before the Assembly. Some fifteen nations offered definite financial contributions and later appeals were sent to all other countries and steps taken to administer the aid.

Traffic in Women and Children

This traffic, which the passport system had greatly limited, it was believed would vastly expand as poverty, hunger and misfortune are exiling such great numbers. The Assembly elaborated a series of measures to meet this danger. Among them were provisions for interrogating all governments as to steps taken by them with this end, and preliminaries for an international conference on the subject. Special attention was directed to the traffic in Armenia and Asia Minor, where the Council is to appoint a committee of enquiry of three resident persons, one of whom must be a woman.

Opium

The suppression of the opium trade had been attempted by international coöperation under the control of the Government of the Netherlands. The trade had lately, however, much increased, especially in China, and Holland was glad to relinquish the matter to the League. The Assembly accepted the transfer, directed the Secretariat to collect data on the subject, and provided for an advisory committee to report to the Council three months prior to every Assembly.

Recommendations of Advisory Committee of Jurists

The recommendation of the Advisory Committee of Jurists at The Hague for the establishment of a Court of International Criminal Justice "to punish crimes committed against international public order," and that the League should aid in establishing an Academy of International Law, in which the Carnegie Endowment had already taken the initiative, were neither recommended by the committee nor the League. The committee did recommend the adoption of a resolution reported from the Hague Committee in favor of a more complete definition of the rules of international law. This latter resolution was defeated after Lord Robert Cecil had urged that we had not yet reached a stage in international relations at which it was desirable to attempt the codification of international law.

An International Language and University

M. LaFontaine introduced the report of Committee No. 2 on an international language, merely recommending an enquiry as to results where such a language was officially taught, but the question was "adjourned" and there seemed no support even for such an investigation. M. LaFontaine also presented the report of the same committee in favor of aiding in an international university, and this was adopted.

At the very date of the adjournment of the Assembly, the Council met to arrange to carry out the enactments of the Assembly, which left that task to it. It ordered the Secretariat to prepare a complete analysis of the proceedings in time for the next Council meeting. Some twelve special committees or organizations appeared to have been provided for. The labors of the Secretariat and the Council are expected to greatly simplify and expedite the tasks of the next annual assembly.

In closing the session of the Assembly, the President declared that "It was possible to say that a great experiment had succeeded." It is respectfully submitted that success can hardly be spoken of as achieved. It lies still in the womb of time. A great attempt has been made, with as yet little result, except increased confusion. There are high hopes, there are anxious fears, and the attempt goes on. The President also said that it

was better to err on the side of impatience than of skepticism. We may add that an examination of the record does not wholly do away with either.

CHARLES NOBLE GREGORY.

THE TREATY OF RAPALLO

The treaty between Italy and the Kingdom of the Serbs, Croats, and Slovenes, which was signed November 12th last at Rapallo, appears now to have been ratified by both parties. The consent of the Italian Chamber was given November 27th, that of the Senate December 8th, and the Prince Regent of the Triune Kingdom, acting upon the advice of the cabinet, ratified the treaty November 22d, the consent of the Skuptschina not being necessary. Finally the City of Fiume, now constituted an independent state, recognized the treaty December 29th. It is to be hoped that this arrangement, while by no means above criticism in its terms, marks the end of the dissensions concerning the disposition of the Adriatic littoral and gives an ultimate solution to one of the most seriously vexing questions with which the Peace Conference was confronted and left unsolved.

There is in this agreement, not only as between the parties immediately concerned but on the part of the other Entente Powers, because of their at least tacit acquiescence in it, the virtual revocation of the secret treaty of London of April 26, 1915, a step which the Peace Conference declined to take, although President Wilson opposed the treaty as giving to Italy much more than Point Nine allowed. The organization of the Jugo-Slav state upon the lines of the Declaration of Corfu, 1917, followed the break-up of Austria-Hungary and was coincident with the armistice. As the treaty of 1915, by which the Entente outbid the Dual Monarchy, was founded upon the continued existence of Austria-Hungary, the boundary lines of the London treaty necessarily had to be recast. Anticipating this dissolution of the Dual Monarchy and the need of uniting the Slavs in opposition to the Hapsburg régime, there had been held in April, 1918, at Rome, the Congress of Oppressed Nationalities, the result of an earlier conference in London between MM. Torre and Trumbic, representing unofficially the Italians and the Jugo-Slavs, respectively. At the Rome Congress the representatives of the same two peoples pledged themselves "in the interest of good and sincere relations between the two peoples in the future, to solve amicably the various territorial controversies on the basis of the principles of nationality and of the right of peoples to decide their own fate, and in such a way as not to infringe the vital interests of the two nations, such as shall be defined at the moment of peace," such pledge being based upon the idea that the "unity and independence of the Jugo-Slav Nation is a vital interest of Italy, just as the completion of Italian national unity is a vital interest of the Jugo-Slav Nation."¹

¹ Translation of text of resolutions, *New Europe*, VII, 55.

At the time of this congress the text of the Treaty of London had been made public by the Soviet Government of Russia. Having in mind the Torre-Trumbic conference and the resolutions of the Rome meeting, a writer in *New Europe* shortly after the armistice was signed and before the Peace Conference met, was able to predict with unusual accuracy the position which President Wilson afterwards took with reference to the secret treaty and the whole question of the Adriatic: "If one thing is certain at the impending Peace Conference, it is that America will decline to ratify or be bound by the secret treaty of London, and will express herself in favor of an arrangement following as nearly as possible the lines of ethnographic cleavage and resting upon the principles of mutual respect and friendly give-and-take."

In order to compare the terms of the Treaty of Rapallo with that of London it will be convenient to consider (1) the boundary between Jugo-Slavia and Italy north and east of Fiume, (2) Fiume, and (3) Dalmatia.

The line set forth in the Treaty of London gave to Italy Istria and the coast of the Quarnero as far as Volusca, almost contiguous to Fiume. Toward the east the line was to follow the watershed of the Julian Alps, thence curving southeastwardly toward the Schneeberg, leaving the Sàve Valley outside Italy; from the Schneeberg to the coast the line was drawn so as to include within Italian territory Castua, Matuglia, and Volusca. Fiume was to be included in what the Treaty of 1915 called the "territory of Croatia, Serbia, and Montenegro," a phrase which showed that the framers of the treaty had at least some notions of ultimate Jugo-Slav unity.

Opposing this treaty at the Peace Conference, President Wilson proposed a line in lieu of that of 1915, based, it was claimed, upon ethnographic and other data collected by American experts. The line, the "Wilson line" of April 26, 1919, broke from that of 1915 at a point between Tolmino and Cercina and proceeded almost directly south to the mouth of the Arsa, leaving all east of that line, including Fiume, to the new state of Jugo-Slavia. No settlement having been reached by the Conference, a joint memorandum by the representatives of Great Britain, France, and the United States of December 9, 1919, modified to some extent the Wilson line so that Italy might have a portion of the Istrian coast upon the Quarnero from Arsa to Finona, toward Fiume, which was to be an independent state under the League of Nations. While this line was not adopted by Italy, it is of importance in that it put Great Britain and France in the position of being willing to abandon the Treaty of London, and to that extent it was a vindication of President Wilson's opposition to the secret agreement.

The line next suggested in the so-called ultimatum to Jugo-Slavia of the following month threw the boundary still further to the east so that Volusca again fell upon the Italian side. The free state of Fiume was to be connected with Italian territory by an Italian *lisière*. This proposition

was put forward jointly by Great Britain, France, and Italy against Jugo-Slavia, with the alternative of the 1915 line.

Following the protest of President Wilson of February 24, 1920, the matter ceased to be one for official Entente negotiation, direct *pourparlers* being carried on between Italy and Jugo-Slavia with the knowledge and approbation of France and Great Britain, with the Treaty of Rapallo as the result. This treaty, balancing Italian claims in the north against Jugo-Slav claims in Dalmatia, more nearly approximates the line of 1915 in the north than that suggested by President Wilson and it is even less favorable to Jugo-Slavia than was the "ultimatum" of January, 1920, against which President Wilson protested. One of the specific objections to the ultimatum line was that it would make difficult the operation by Jugo-Slavia of the railway north of Fiume. The Rapallo boundary deprives Jugo-Slavia of the line of the railway as far as the junction-point of St. Peter, on the direct route from Fiume to Laibach. In addition, solid blocks of Slovenes are thrown into Italian territory. This line, therefore, is Italy's "compensation" for her surrender of claims to Fiume and Dalmatia. It also explains why the Slovenes are relatively the least reconciled to the arrangement.

Leaving D'Annunzio's coup to one side to be regarded as a literary interlude which tended to injure rather than assist Italy, it will be recalled that while the Treaty of London left Fiume, city, district, and *corpus separatum* to the "territory of Croatia, Serbia, and Montenegro," the Municipal Council of Fiume declared (October 30, 1918), just prior to the armistice, for annexation with Italy. In opposing such a transfer, President Wilson stated (April 23, 1919) that Fiume must serve as the outlet and inlet of the commerce, "not of Italy, but of the lands to the north and northeast of that port: Hungary, Bohemia, Rumania, and the states of the new Jugo-Slavic group." To the proposition of Great Britain, France, and Italy embraced in the "ultimatum," Mr. Wilson was no more friendly, for while it was then proposed to make Fiume an independent state, the *lisière* was assigned to Italy, and this the President regarded as a menace of ultimate Italian control. In the Treaty of Rapallo, Italy and Jugo-Slavia recognize the complete liberty and independence of the State of Fiume, and engage to respect it as such *in perpetuo*. The State of Fiume embraces the *corpus separatum* as at present delimited, including the city and district of Fiume, together with the *lisière* to connect with Italian territory. No mention is made of any supervision or control over Fiume by the League of Nations.

Adjacent to Fiume and separated by a stream only a few yards in width is Susak, which goes to Jugo-Slavia. By the Treaty of London the coast of Croatia (referred to as lying between the Gulf of Volusca and Novi) was assigned to the "territory of Croatia, Serbia, and Montenegro"; to Italy was given "the province of Dalmatia in its present extent," in

addition to numerous islands. A large portion of the Dalmatian coast from Cape Planka (between Trav and Sebenico) to Cape Stilos in Albania was to be neutralized. The Treaty of London had assigned to Italy practically all of the coast except that part formerly belonging to Hungary—a very small extent—and that portion belonging to Montenegro and Serbia. Albania was to be subject to a possible partition among Montenegro, Serbia, and Greece. With the formation of Jugo-Slavia the position of Montenegro as an international entity practically disappeared. The Treaty of Rapallo makes no mention of either Montenegro or Albania, the partition of which President Wilson opposed. Zara and its environs and the islands of Lagosta and Pelagosa are given to Italy.

The Treaty of Rapallo, therefore, does not diverge very greatly from the Treaty of London as to the boundary east of Trieste and north of Fiume. Dalmatia goes to Jugo-Slavia as compensation for her concessions in the north, and Fiume becomes an independent state. To what extent the terms of the treaty will permit Fiume to maintain her economic position remains to be seen. It may be a second Cracow.

It would seem that the United States has no interest in this settlement, as President Wilson, while protesting against the ultimatum of January, 1920, stated that there could be no objection to a settlement reached by direct negotiation between the parties immediately interested. No doubt the hint was taken, direct negotiations had, and the influence of Great Britain and France exerted upon Jugo-Slavia for the acceptance of a line really in Italy's favor.

J. S. REEVES.

THE FEDERATION OF CENTRAL AMERICA

At a time when the spirit of nationalism is disrupting ancient empires and rendering more difficult the task of international organization, it is a great relief to find a group of nations abandoning their separate existence to form one unified nation. It is a special pleasure to witness this happy event on the Western Hemisphere, whose interests have been too much ignored in the vaster ideal for international unity.

The recent decision of Guatemala, Honduras, Salvador, and Costa Rica to form the Federation of Central America is of considerable interest and importance. The failure of Nicaragua to join the Federation is most lamentable, but there is reason to believe that her entrance into the union is only delayed by reason of certain diplomatic complications, which should be speedily removed.

The Constitution of the Federation has many features suggesting the American Constitution. An even larger degree of local sovereignty is left

to the separate States, as is disclosed in Articles III and IV, reading as follows:

Article III. In so far as it may be consistent with the Federal Constitution, each state will preserve its autonomy and independence in the handling and direction of its domestic affairs and all powers not vested in the Federation by the Federal Constitution.

Article IV. So long as the Federal Government, through diplomatic action, shall not have obtained the modification, denunciation or substitution of the treaties in force between the States of the Federation and foreign nations, each state shall respect and continue faithfully to observe the treaties that bind it to any one foreign nation or more to the full extent implied in the existing agreements.

The purpose of Article IV may be to cover the peculiar case of Nicaragua, which finds itself compromised by the Bryan-Chamorro Treaty of 1916, whereby the United States gained important privileges, including the right to construct an interoceanic canal and to maintain a naval base in the Gulf of Fonseca. It may also cover the special obligations assumed by the United States toward the actual Government of Nicaragua, with regard to financial intervention in the domestic affairs of the country.

The provision in the Constitution of the Federation regarding the Executive strongly suggests the Swiss model—in that: "The Executive power shall be exercised by a Federal Council composed of delegates elected by the people." It is understood that the chairmanship of this Council will rotate from year to year among the States composing the Federation—a solution most conducive to harmony.

Provision is made for the creation of a Federal District—a most delicate and difficult problem. In view of the fact that by the Treaty of Washington in 1907 Honduras was neutralized as a kind of buffer state, it would seem logical that it should either form the Federal District as a whole or part of its territory.

Regarding the question of finances, the Federal Constitution provides: "The Federal Government will administer the national public finances, which will be different from those of the States." It is not clear from this provision just what arrangements will be made to cover the foreign indebtedness of the separate States—which, in the case of Honduras, has been estimated at some twelve millions of dollars.

The separation of the five republics of Central America has been quite as absurd as if Rhode Island and the other New England States had attempted to exist as independent sovereign nations. Costa Rica, with an area of 23,000 square miles, has a population of less than 500,000. The total population of the five republics is about five millions, that is to say, a third of that of Mexico, with about a fifth of its area.

The disturbances and dissensions in Central America have long caused the United States great embarrassment, and compelled repeated intervention. At the present moment American marines are actually stationed in Managua, the capital of Nicaragua. Owing to the problem of an inter-

oceanic canal, and to the Monroe Doctrine, the relations of these countries with European nations have caused great concern. For a good more than half a century, the United States and Great Britain were embroiled and embittered in their relations over the question of an interoceanic canal. The lamentable Clayton-Bulwer Treaty constituted a momentous breach of the Monroe Doctrine, and the United States did not regain its liberty of action until the Hay-Pauncefote Treaty finally extinguished in 1901 the right of British intervention in Central American affairs.

The original union of the five Spanish provinces of Guatemala, Salvador, Honduras, Nicaragua, and Costa Rica, at the time of their revolt from Spain, was largely of a perfunctory nature. They had been isolated from each other and had enjoyed a large degree of autonomy. They gravitated politically to Madrid rather than to Guatemala, the seat of the Real Audiencia, and were actually represented by official deputies in the Cortes of 1812. The union did not spring from a realization of intimate interests and needs. It dragged on a precarious existence until 1839, when the heroic Morazan lost his life in a supreme but vain effort to hold it together by the sheer compulsion of arms.

Repeated efforts have been made to restore the union. Guatemala, Honduras, Salvador, and Nicaragua maintained a *quasi* union from 1843 until 1845. In 1850, and again in 1895, Honduras, Salvador, and Nicaragua proclaimed this union, but in both instances the attempt failed because it savored of a political alliance directed against their neighbors, Guatemala and Costa Rica. General Rufino Barrios, the distinguished Guatemalteco, made a bold attempt in 1885 to restore the union and lost his life in his patriotic endeavor.

The United States was the host of a conference of the five republics, held in Washington in 1907, to consider their mutual interests. The restoration of the union was eloquently urged by some of the delegates but, owing to adverse political conditions in Central America, seemed out of question at that time. The foundations were laid by this conference, however, for advantageous understandings concerning such matters as currency, commercial relations, inter-communications and citizenship laws. A Central American Court of Justice was established at Cartago, in Costa Rica, which seemed to give promise of great results. Unfortunately, the political and diplomatic standing of the judges did not permit the court to function as a strictly judicial tribunal. The work of the Washington Conference, however, may be said to have constituted a great step in advance toward the goal of reunion.

The desire for the restoration of the union is undoubtedly a popular desire in so far as there has been any real opportunity for an expression of public opinion on the subject. There has long existed among the well-to-do and better-educated a strong sentiment in favor of the union. In recent years numerous organizations have been formed to bring it about.

A group of students have recently made a passionate appeal to the United States to facilitate the union by withdrawing the marines from Nicaragua. Honduras still uses as its official seal the infelicitous symbol of the union—five flaming volcanoes. And several of the constitutions of these republics expressly provide that their independence is to be deemed temporary in character pending the restoration of the union.

The reasons why the union could not be maintained or easily revived are readily understood. First of all: their inaccessibility. No direct rail communication yet exists between any two of them, though, in the case of Salvador, a connection with the Caribbean port of Puerto Barrios in Guatemala is an urgent necessity. Travel between these countries is mainly by mule across high mountains and swift rivers, or by steamers along coasts ill provided with good harbors. The completion of an adequate system of railroads connecting all the republics and forming links in the grandiose scheme for a Pan-American railway is an imperative reason for the restoration of the union. The task of railroad construction is quite beyond their individual initiative and resources.

The ambitions of a relatively small number of professional politicians has been a second serious obstacle in the way of union. The existence of five independent sovereign states has offered a profitable field for ambition and exploitation. The interminable struggles of the "outs" to wrest control from those in power have plunged several of these countries into almost constant unrest, bloodshed, and ruin. The masses of the people are industrious and docile, utterly out of sympathy with these political changes in which so often they have been unwillingly compelled to take part. But among the politicians are to be found many who sincerely deplored this state of affairs and who strongly favored the union. Their advocacy of the cause, however, has often been viewed with suspicion as indicating a sinister ambition to control the destinies of five republics rather than of one.

Still another obstacle in the way of union has been the reluctance of certain of the more favored States to shoulder an unequal yoke with the more turbulent and discredited of their sister republics. The question of common finances has been a great stumbling-block. Costa Rica has enjoyed a relative political calm and prosperity over some forty years, broken only of late by one or two bloodless *coups d'état*. Though in a position to render service of inestimable value to the union, it naturally was reluctant to throw in its lot with its less fortunate neighbors.

These obstacles, namely, inaccessibility, factional intrigues, and a disinclination for a too exacting political partnership, are evidently not now regarded as seriously as in former years. This is due primarily to the consciousness of a genuine community of interests among the five republics. They speak the same language and love the same literature. They possess poets of high rank. They profess the same religious faith—if they profess any at all—and refer to each other as *coreligionarios*. They have the same

customs and traditions. They have the same political instincts. What is of special importance, they have the same fear of foreign intervention.

No one can fairly accuse the United States of sinister designs on these republics, and yet its repeated interventions in their domestic affairs, as well as in their external affairs, have induced a state of mind not agreeable to contemplate. When they consider the presence of American marines in Nicaragua and the treaty of 1916 whereby the United States gained important privileges in that country, and when they remember other acts of intervention, it is not strange that Central Americans should be drawn together in the desire for a union to better protect their mutual interests.

Having no ulterior aims of its own in these republics, the United States cannot view with disfavor this movement toward reunion. On the contrary, it should regard with peculiar favor a movement so in accord with its own traditions and ideals, and one which should vastly simplify its problems in that important region. It has been far from agreeable to be compelled to intervene so frequently in the affairs of these countries, and it should be an immense relief to have to deal with one responsible nation rather than with five.

The cynical argument may be advanced that it would be more to the advantage of the United States to oppose a strong political combination in the neighborhood of the Panama Canal and to favor a fictitious balance of power among the countries concerned. The answer to this would seem to be that, though Europe may choose to foster disreputable Balkan intrigues, the United States would do well to eliminate all further possibility of intrigue in the unhappy "Balkans" of Central America. World organization and peace are not to be effected by the perpetuation of divisions but by the welding together of common interests. If Europe cannot see this, America can.

Blaine saw this most clearly when Secretary of State, and had he held office longer would have labored with vision and enthusiasm to help bring about the Federation of Central America. The time was doubtless not ripe for the realization of this ideal. The inspiring moment appears to have now arrived. Here lies a magnificent opportunity for American statesmanship. Here is presented in clear, concrete fashion an opportunity to help express in practice an ideal which hitherto has been advocated in the abstract. Whatever the fate of world organization, the United States has an obvious duty in the Western Hemisphere to facilitate international understandings and all movements toward the unification of mutual interests. The step just taken by the four States of Central America may prove an inspiring precedent for many other nations to follow.

PHILIP MARSHALL BROWN.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE

As finally adopted by the Assembly of the League of Nations, the project for a Permanent Court of International Justice, drafted by the Advisory Committee of Jurists at The Hague in July, 1920,¹ consists of 64 articles, to which is attached a very clever protocol of signature, which will permit the nations preferring the original draft of the Advisory Committee to sue and be sued without a special agreement. The protocol of signature is, therefore, to be considered as an integral part of the project, although it might not seem to be such at first sight. The project consists of three chapters, the first on the organization of the court, and made up of Articles 2 to 33, inclusive; the second, on the competence of the court, consists of Articles 34 to 38, inclusive; the third, dealing with procedure, consists of Articles 39 to 64, inclusive. To these there is prefixed the first article in the nature of a preamble, which is substantially identical with the corresponding article of the project drafted by the Advisory Committee of Jurists.

The section of the Advisory Committee's project devoted to procedure fared best at the hands of the Council and the Assembly. The section devoted to the organization of the court was retained in its main features, although many modifications, largely in the nature of additions, were made to it. Chapter 2, devoted to the competence of the court, has disappeared, and it has been replaced by new articles which in many instances are based upon the original draft of the Advisory Committee, where those articles were not opposed to the views of the Assembly, which, on more than one occasion, appeared to prefer the Court of Arbitral Justice of 1907 to the Permanent Court of International Justice of 1920.

Some of these changes are of importance and require consideration, whereas others are matters of form or of lesser importance. The method of appointing the judges is preserved intact. The right of a national to sit upon the bench in the trial and disposition of a case is retained, as is also the right to appoint a judge for the trial and disposition of a case if a country has not a judge of its own nationality in the court. These provisions justified the meeting of the Advisory Committee, and its members would deserve to be held in grateful remembrance if they had inserted them in the proper place in the draft of the Court of Arbitral Justice of 1907 and thereupon adjourned. They attempted, however, to do what some of its members thought to be possible in 1920, but which proved to be as impossible then as in 1907. It is doubtless a sad reflection, but it

¹ The original draft was printed in the Supplement to the JOURNAL for October, 1920, p. 371. An editorial comment in the same issue gave the circumstances under which the draft was prepared and briefly explained its provisions. The action upon the draft by the Council of the League of Nations was related in the last number of the JOURNAL, p. 52.

is a true one, that the world of 1920 is made up of people very much like those of 1907, and until other conceptions have found lodgment in the mind and practice of nations their conduct in the future will be much like that of the past.

There was a conscious omission in Article 4 of the Committee's draft. It was pointed out in discussion, but it was thought advisable to leave it to the Council or the Assembly. There are some newcomers in the Society of Nations since 1907, as the consequence of the World War. As they have not as yet adhered to the Pacific Settlement Convention of 1907, they have not appointed their members of the Permanent Court of Arbitration, who, divided into national groups, are to prepare lists of judges to be presented to the Council and Assembly of the League for their consideration.

In the next place, there is a modification in Article 5 which is a decided improvement. Mr. Root had proposed that each national group should nominate four persons, only two of whom could be fellow-countrymen of the members of the national group. Baron Descamps, president of the Advisory Committee, and Mr. de Lapradelle, one of its members, insisted upon not more than two, and the committee somewhat reluctantly yielded to their insistence. Mr. Hagerup was especially desirous that the number should be larger, so that the Council and Assembly should have the largest practicable list of competent persons from whom to make their choice. He was willing—indeed he proposed that the candidates nominated should never be more than double the number of seats to be filled. Rejected in the Advisory Committee, this provision was adopted by the Assembly. It is believed that this modification is a decided improvement upon the original plan.

Articles 16 and 17 contain a modification of a very important nature, inasmuch as it shows an intention on the part of the Assembly to discriminate between the ordinary members of the court, on the one hand, and the deputy judges on the other. These two articles gave the Advisory Committee no end of trouble. It was their desire, as it doubtless was that of the Assembly, to secure the impartiality of the judges in so far as impartiality can be made by a provision to that effect. After much discussion, they agreed upon an article declaring the position of judge to be incompatible with the exercise of any function belonging to "the political direction, national or international, of States." There is no distinction here, between ordinary and deputy judges. Both were covered as members of the court. There was, however, a very decided feeling that a distinction should be drawn between an ordinary judge called upon to sit regularly in the international court, and a deputy judge, who might or might not be called upon to sit during the period for which he was elected. The partisans of deputy judges, who looked upon them as persons likely to be chosen as ordinary judges at later elections, advocated

that there should be no distinction—the phrase “nursery of the court” was applied to them on more than one occasion during the discussion,—that the qualifications of each should be the same in all respects, even including salary. The Assembly did not share these views. It therefore modified Article 16 by providing that “the ordinary members of the court may not exercise any political or administrative function,” and it expressly stated that it did not apply to deputy judges “except when performing their duties on the court.”

In Article 17 of the original project, reproducing Article 7 of the draft convention for the Court of Arbitral Justice, it was provided that no member of the court, including ordinary judge and deputy judge, should act as agent, counsel or advocate in any case of an international nature. This the Assembly left untouched, but expressly removed the deputy judges from the inhibition, except “as regards cases in which they are called upon to exercise their functions on the court.” This can only mean that the ordinary judges are looked upon as judicial officers during the entire period of their appointment, whereas the deputy judges are only to be considered as such during actual service upon the bench. This distinction was followed by the Assembly in fixing the salaries and allowances of the members of the court in conformity with Article 32 of the statute. Ordinary judges receive an annual salary in addition to duty allowances, whereas deputy judges are paid only for the time they are actually in the service of the court. If a military expression be permitted, the ordinary judges are always in active service, the deputy judges are in the reserve, subject to call.

Such are the principal modifications until Article 26 is reached, at which point three articles, by way of an addition, are inserted in the text, providing a special and a preferred situation for the treatment of labor disputes and those arising out of the sections of the various peace treaties dealing with transit and communications.

Article 26 provides that labor cases, referred to in Part XIII in the Treaty of Versailles and like provisions in the other peace treaties, may be tried by the Permanent Court of International Justice as any other case, or, at the request of parties, by a special chamber consisting of five judges “selected so far as possible with due regard to the provisions of Article 9.” Two deputy judges are to be chosen to replace in case of need an ordinary judge who is unable to sit. In all cases, the judges are to be assisted by four technical assessors, sitting with them, but without the right to vote, and “chosen with a view to insuring a just representation of competing interests.”

It does not appear that each of the parties litigant is to have a judge of its own nationality, and this could not very well be the case inasmuch as the chamber of five judges is to be appointed for three years and therefore in advance, it is to be presumed, of such prospective litigation. If

one of the parties should have a judge of its own nationality, what is to be done? According to procedure in other cases, a national of the other litigating nations would be added, and if neither litigant had, each would choose a judge for the trial and disposition of the case. Apparently, if each of the parties has a judge upon the special chamber, they are to remain, but if only one has, the article provides that the President is to invite one of the other judges to retire in favor of a judge of the other party chosen in accordance with Article 31 of the project. That is to say, if both litigants are represented in the chamber, well and good. If one is, the other must be, so as to preserve equality at the moment when it counts. Apparently, if neither has, the equality exists and there seems to be no provision for each of the litigating parties to add a judge, as is the case of the ordinary procedure of the court. The assessors are to be chosen by the court in each case according to the rules of court to be prepared under the authority of Article 30 from a list of "assessors for labor cases." Each member of the League of Nations is to nominate two persons and two are to be nominated by the Governing Board of the Labor Office. One-half of the persons nominated by the Governing Board are to represent workmen and the other half employers, from the list referred to in Article 412 of the Treaty of Versailles and the like treaties. The International Labor Office may furnish the court with "all relevant information," and for this purpose the Director thereof is to receive copies of the written proceedings.

Article 28 deals with cases relating to transit and communications, especially those referred to in Part XII, Ports, Waterways, and Railways, in the Treaty of Versailles and in other peace treaties. The court as ordinarily constituted may try any and all of these cases. If, however, the parties prefer, they may be passed upon by a special chamber of five judges elected in the same way as in the preceding article. Four technical assessors may sit with the court if the parties so desire or if the court so decides. Their presence is not obligatory, as in the case of labor cases. They are to be chosen from a list of "Assessors for Transit and Communications Cases," made up of two persons nominated by each member of the League. The provisions concerning the nationality of the judge are the same as in labor cases.

Such are the main features of the procedure to be followed in the case of this special category of cases. There is one further deviation from general procedure in that the special chambers may, with the consent of the parties to the dispute, sit elsewhere than at The Hague, although the court in full bench is to be located in that city.

There are a few changes of form in the remaining articles of the first chapter, but none it is believed of substance, so that, on the whole, it may be said that the really important part of the project drafted by the Advisory Committee has stood the assaults of Council and Assembly and

has stood them well. The modified procedure in cases of labor and in transit and communications cases may or may not justify itself. There is something to be said in its favor, inasmuch as these cases may be of a highly technical nature. There is something to be said against it, in that certain cases are given preferred treatment. Time will tell whether the modification is wise or unwise. In any event, it does not affect the broad lines of the scheme.

Chapter 2, on the competence of the court, which was to register the advance of 1920 over 1907, had hard luck, to put it mildly, with the Council and with the Assembly. As already has been stated, it was replaced by a series of articles drafted by the Assembly. Misery, it is said, likes company, and if this applies to the elect of the world as well as to the groundings, the members of the Advisory Committee may take some comfort in the fact that the recommendations of the Council regarding this portion of the draft found scant favor with the Assembly, and were rejected by that body for articles of its own composition. The cause for the drastic action of the Assembly, and to a certain degree of the Council, is easy to understand. The Advisory Committee carried over Article 13 of the Covenant into its project, on the theory that the court should have some definite jurisdiction and a certain category of cases in which nation sues nation as man sues man in national courts. The Advisory Committee was not sure that the Covenant was so worded as to vest the court with this jurisdiction in this category of cases, but the majority of its members thought it to be their duty to recommend it in the knowledge that the approval of such jurisdiction in the specified cases by the Council and the Assembly would create an obligation, if it did not exist according to the exact wording of the Covenant. This theory is correct and can not be gainsaid, but neither the Council nor the Assembly was willing to accept and to give effect to the recommendation. No nation is to be forced to appear before the tribunal as defendant and judgment taken in the case presented by the plaintiff in the defendant's absence, should the State invited fail to attend. The Assembly frankly preferred the method of 1907, which contemplated a special or general agreement of the parties to resort to the court, which of course means that the method of arbitration with the *compromis* and all that it entails is to be the rule instead of the procedure before a national court of justice, in which each party presents its case and allows the court to decide, without requiring an agreement on the part of the parties upon the point at issue, and what is more important, upon the submission of their views to the tribunal.

But a happy compromise was reached. It was suggested, and the suggestion found favor, that the general rule could be varied by the parties. Those who wished the procedure characteristic of a court of arbitration, which was the rule adopted by the Assembly, were satisfied. Those nations, on the other hand, which wished to vest the court with jurisdiction

within the categories of disputes mentioned in Article 13 of the Covenant might do so, and among them judicial instead of arbitral procedure would prevail. All they needed to do was to accept the procedure which becomes a court at signing or ratifying a protocol to this effect, to be annexed to the constitution of the court, or to declare at some later time their adherence to this method; and in the protocol they might accept unconditionally or upon condition of reciprocity. This is a very wise provision. It allows the stragglers to catch up, without staying the arm of progress. It does not compel a nation against its will to bind itself, but it allows public opinion to have its say and it trusts to the experience of the nations with judicial procedure to convince the doubting Thomases. These are, of course, the large States, and naturally so, because they are the ones who renounce their right to settle their disputes by force of arms, whereas the smaller States, unable perhaps to resort to war, receive the protection of justice, before which one day even the stiffest neck will bend.

In the draft of the Advisory Committee, the interpretation of the judgment of the court was included in the category of cases to be submitted. This the Assembly rejected, apparently feeling it unwise to go beyond the letter of Article 13 of the Covenant.

Again, the elaborate provision of the draft requiring advisory opinions of the court to be submitted to the Council or Assembly upon request of one or the other body, disappears, and its place can hardly be said to be taken by the concluding paragraph of Article 38, as modified by the Assembly, which allows the court "to decide a case *ex æquo et bono*, if the parties agree thereto."

The provision just quoted is believed to be a mistake. A court of justice should be a court of law. It should not be authorized to sit as a court of arbitration, deciding questions presented to it upon the principle of give and take, or upon its own sense of the fitness of things. This is the function of the so-called Permanent Court of Arbitration. The opening article of the project provides that the Court of Arbitration, on the one hand, and the Permanent Court of International Justice, on the other, are to be distinct bodies. This paragraph breaks down the separation and makes the court of justice to a certain extent a competing body.

Another modification which tends to confuse the functions of the Court of Justice with the Court of Arbitration is Article 59 of the project as adopted by the Assembly. This is one of the few cases in which the views of the Council prevailed. It seems to be also a triumph for the British member, who urged its acceptance. The article in question provides that the decision of the court has no binding force except between the parties and in respect of that particular case. It would be expected that this amendment should have come from the Continent instead of from Great Britain, where judicial decisions are binding precedents for future judgments. However, the amendment was not meant to indicate a preference

of Continental over British practice. It was apparently in keeping with arbitral procedure, in which awards bind only the parties and are limited to the case. It was the natural consequence of making a resort to the court depend upon a special agreement of the parties defining the issue to be submitted to the court. It is out of place, it is believed, in a court with a jurisdiction, however limited, and it is a final indication on the part of the great Powers that, after all, only the things possible in 1907 stood a chance of being accepted in 1920. The large Powers had the choice between judicial procedure in the project drafted by the Advisory Committee, and arbitral procedure in the draft convention of 1907 for the Court of Arbitral Justice. They preferred the latter. They have given to the Court of Arbitral Justice a permanent personnel, so that it does not need to be constituted anew for each case. They have allowed, however, the States which prefer a court of justice to a court of arbitration to express their preference by adopting alternative procedure. In so doing, they have no doubt safeguarded their own interests, for they were apparently thinking of themselves. They have, however, and in this they are to be commended, allowed the experiment to be tried by those who wish to do so. The future will decide which method is to prevail.*

JAMES BROWN SCOTT.

AMERICAN AND BRITISH CLAIMS ARBITRATION TRIBUNAL

The Governments of the United States and Great Britain being desirous that certain pecuniary claims outstanding between them should be referred to arbitration, in accordance with the provisions of the Hague Convention for the Pacific Settlement of International Disputes, signed the Pecuniary Claims Agreement at Washington on August 18, 1910.¹ This agreement provided for the appointment of an arbitral tribunal to hear and decide the cases submitted, which cases were to be included in schedules agreed to by the two governments.

The first schedule² of claims to be submitted to the Tribunal was signed July 6, 1911. It contained about four hundred claims. These claims were divided into four classes, as follows:

Class I. Claims based on alleged denial in whole or in part of real property rights.

Class II. Claims based on the acts of the authorities of either Government in regard to the vessels of the nationals of the other Government,

* A composite showing the project as originally drafted by the Advisory Committee of Jurists and as modified by the Council and by the Assembly of the League of Nations is printed as an appendix to the Proceedings of the Executive Council of the Society for 1920.

¹ Printed in this JOURNAL, Supplement, Vol. 5 (1911), p. 257.

² *Ibid.*, p. 261.

or for the alleged wrongful collection or receipt of customs duties or other charges by the authorities of either Government.

Class III. Claims based on damages to the property of either Government or its nationals, or on personal wrongs of such nationals alleged to be due to the operations of the military or naval forces of the other Government or to the acts or negligence of the civil authorities of the other Government.

Class IV. Claims based on contracts between the authorities of either Government and the nationals of the other Government.

The agreement and schedule of claims were ratified by an exchange of notes between the two Governments on April 26, 1912.

Sir Charles Fitzpatrick was appointed arbitrator on the part of Great Britain, and Mr. Chandler P. Anderson, arbitrator on the part of the United States. These two national arbitrators chose M. Henri Fromageot of France, as umpire.

The Arbitral Tribunal, so constituted, held its first meeting in Washington in May, 1913, and an adjourned meeting in Ottawa, Canada, in June, 1913. At this session the following cases were argued: *Lindisfarne* and *Canadienne* (claims of Class II); *Union Bridge Company* and *Hardman* (claims of Class III); and *King Robert* and *Yukon Lumber* (claims of Class IV). On June 18, 1913, the Tribunal announced its awards³ in the cases of *Lindisfarne*, *Hardman*, *Yukon Lumber* and *King Robert*.

The tribunal held its next session in Washington, March-May, 1914, when the following cases were argued: *Studor* (claim of Class I); *Coquitlam*, *Favourite*, *Wanderer*, *Kate*, *Lord Nelson*, *Eastry*, *Newchwang*, *Sidra*, *Thomas F. Bayard*, *Jessie*, *Pescawha*, *Frederick Gerring*, *David J. Adams*, *Tattler*, *Argonaut* and *Jonas H. French* (claims of Class II); *Home Missionary Society*, *Great Northwestern Telegraph Co.* and *Cadenhead* (claims of Class III); and *Hemming* (claim of Class IV). On May 1, 1914, the Tribunal announced its awards⁴ in the cases of *Canadienne*, *Cadenhead*, *Frederick Gerring*, *Great Northwestern Telegraph Co.*, *Eastry*, and *Lord Nelson*.

The Tribunal then adjourned to meet abroad in July, 1914, for the discussion and preparation of the awards in the remaining cases argued and submitted at the previous sessions of the Tribunal, with the exception of the case of *Union Bridge Company* in which a reargument had been ordered. Owing to the outbreak of war while the Tribunal was at work on these cases, it was prevented from completing these awards, and during the war it was found impossible for the Tribunal to meet and continue this work.

It was subsequently arranged, however, between the two Governments that without a formal meeting of the Tribunal, awards should be rendered

³ Printed in this JOURNAL, Vol. 7 (1913), p. 875.

⁴ *Ibid.*, Vol. 8 (1914), p. 650.

in all cases awaiting decision, in which the awards had been drafted and discussed by the Tribunal prior to the outbreak of the war, and pursuant to this arrangement the awards⁵ of the Tribunal in the cases of *Coquitlam*, *Home Missionary Society*, *Tattler* and *Hemming* were announced by M. Fromageot at Paris on December 18, 1920. It is expected that awards in several of the other cases which were under discussion by the Tribunal in 1914 will shortly be announced under this same arrangement.

Arrangements are in contemplation between the two Governments for a meeting of the Tribunal for the purpose of preparing the awards in the other cases already argued and for hearing the remaining cases included in the above-mentioned schedule of claims.

The resumption of the work of the American-British Claims Arbitration Tribunal is a welcome indication of the progress toward normalcy in the settlement of international controversies by the rule of law and justice in place of force and politics.

CHANDLER P. ANDERSON.

THE AALAND ISLANDS QUESTION

The submission to the League of Nations of the Aaland Islands dispute between Sweden and Finland, has been given considerable publicity for purposes of propaganda, but the interesting problems involved in the dispute have been given but slight attention.

The main uncontested facts in the case are as follows: The Aaland Islands are situated at the entrance of the Gulf of Bothnia, and are separated from Sweden by about 50 kilometers, and from Finland by about 70. They are about 300 in number, with an area of approximately 1,442 square kilometers, and a population of 25,000 inhabitants, almost entirely Swedish. The islands contain many excellent harbors for big ships.

Until the year 1809, except for a short period of Russian domination at the beginning of the Eighteenth Century, the Aaland Islands were part of the Kingdom of Sweden. They were then conquered by Russia and incorporated, with Finland, into the Russian Empire. By the Treaty of Paris in 1856 the islands were "demilitarized," that is to say, in the interests of Sweden and other nations of Europe, it was forbidden to fortify these strategic islands. Russia saw fit, however, during the recent war to fortify them without protest from either her allies or adversaries.

Finland declared its independence as a nation on the 15th of November, 1917; was formally recognized by the Soviet Government of Russia on the 4th of January, 1918, and by the Swedish Government on the same date. It appears that as early as the 20th of August, 1917, delegates of the communes of the Aaland Islands assembled at Finstrom and decided

⁵ Printed at page 292.

to bring to the notice of the Swedish Government and Parliament that the population of the islands for special reasons keenly desired that the islands should be reunited to the Kingdom of Sweden. This resolution was communicated to the Swedish Government on the 27th of November. By subsequent plebiscites about 95 per cent. of the population declared in favor of reunion with Sweden. A deputation was received by the King of Sweden on the 3rd of February, 1913. A fact of much significance was the landing of Swedish troops on the islands at the request of the inhabitants to secure the removal of the Russian troops who would not depart unless the Finnish "White" troops also left at the same time. The Swedish troops then withdrew likewise.

Already on the 16th of January, 1918, the King of Sweden, in the speech from the throne to the Rikstag, had expressed his conviction that the independence of Finland would facilitate a satisfactory settlement of the Aaland Islands question. After private negotiations, Sweden formally requested the Government of Finland in November, 1918, to arrange for a plebiscite to decide the political fate of the islands. Such a plebiscite would naturally have been almost unanimously for Sweden, and was refused by Finland on the general ground that it is essential to the economic and the military security of Finland to retain the islands. The Finnish Government furthermore declared that: "In opposing the Swedish Government's proposal to submit the question of the future status of the islands to a plebiscite of the population, [it] is following the principles according to which several territorial questions were decided by the Peace Conference, in cases of conflict, as here, between the wishes of a minority and the economic and military security of a nation."¹

The question was brought to the attention of the Council of the League of Nations by the inhabitants of the Aaland Islands and by the Swedish Government, and the following resolution was unanimously adopted by the Council with the assent of Sweden and Finland on the 12th of July, 1920:

An International Commission of three jurists shall be appointed for the purpose of submitting to the Council, with the least possible delay, their opinion on the following points:

(1) Whether, within the meaning of paragraph 8 of Article 15 of the Covenant, the case presented by Sweden to the Council with reference to the Aaland Islands deals with a question that should, according to International Law, be entirely left to the domestic jurisdiction of Finland.

(2) The present position with regard to international obligations concerning the demilitarization of the Aaland Islands.²

This commission was organized as follows: Professor F. Larnaude, Dean of the Faculty of Law at Paris, President; Professor A. Struycken,

¹ *Official Journal, League of Nations, Special Supplement No. 1, August, 1920, p. 5.*

² *Ibid.*, No. 3, October, 1920.

Councillor of State of the Kingdom of the Netherlands; and Professor Max Huber, Legal Advisor of the Swiss Political Department. M. G. Kæckenbeæk, of the Legal Section of the Secretariat of the League of Nations, was appointed secretary of the commission.

The conclusions of the commission, announced on the 5th of September, 1920, after hearing the statements of both parties to the dispute were as follows:

(1) The dispute between Sweden and Finland does not refer to a definitive established political situation, depending exclusively upon the territorial sovereignty of a State.

(2) On the contrary, the dispute arose from a *de facto* situation caused by the political transformation of the Aaland Islands, which transformation was caused by and originated in the separatist movement among the inhabitants, who invoked the principle of national self-determination, and certain military events which accompanied and followed the separation of Finland from the Russian Empire at a time when Finland had not yet acquired the character of a definitively constituted State.

(3) It follows from the above that the dispute does not refer to a question which is left by international law to the domestic jurisdiction of Finland.

(4) The Council of the League of Nations, therefore, is competent, under paragraph 4 of Article 15, to make any recommendations which it deems just and proper in the case.³

To summarize this decision, it merely amounts to a statement that there is no absolute right of self-determination; that the fate of the Aaland Islands, as in the case of the Trentino or Poland, is to be determined ultimately by the concert of Powers. The commission remarks, concerning the recognition of new States during the late war, that:

In many cases they were only recognitions of peoples or nations, sometimes, even, mere recognitions of Governments. The precise determination of the territorial status of these States was usually left to the great diplomatic reconstruction of Europe which would follow the conclusion of peace, just as, in some cases, were certain peculiarities of their political constitution and legislation, especially concerning the protection of minorities, which were thus reserved for international settlement.⁴

On the general question of national self-determination, the commission appears to incline to the point of view of Finland when it says:

The fact must, however, not be lost sight of that the principle that nations must have the right of self-determination is not the only one to be taken into account. Even though it be regarded as the most important of the principles governing the formation of States, geographical, economic and other similar considerations may put obstacles in the way of its complete recognition. Under such circumstances, a solution in the nature of a compromise, based on an extensive grant of liberty to minorities, may appear necessary according to international legal conception and may even be dictated by the interests of peace.⁵

Though the commission seems to hold that revolution and insurgency is solely of domestic concern (*idem.*, p. 6), it pronounced the following

³ *Idem.*, p. 14.

⁴ *Idem.*, p. 8.

⁵ *Idem.*, p. 6.

extraordinary *obiter dictum*, which has a portentous bearing on the question of the right of the League of Nations to intervene in such abnormal situations as that now existing in Ireland:

The Commission . . . does not give an opinion concerning the question as to whether a manifest and continued abuse of sovereign power, to the detriment of a section of the population of a State, would, if such circumstances arose, give to an international dispute, arising therefrom, such a character that its object should be considered as one which is not confined to the domestic jurisdiction of the State concerned, but comes within the sphere of action of the League of Nations.⁶

In regard to the question of the demilitarization of the Aaland Islands, the commission decided that:

(1) The provisions of the Convention and Treaty of Peace of 30th March, 1856, concerning the demilitarization of the Aaland Islands are still in force.

(2) These provisions were laid down in European interests. They constituted a special international status relating to military considerations for the Aaland Islands. It follows that until these provisions are duly replaced by others, every State interested has the right to insist upon compliance with them. It also follows that any State in possession of the Islands must conform to the obligations binding upon it arising out of the system of demilitarization established by these provisions.⁷

In denying the claim put forward by Sweden that the convention of 1856 definitely created a "real servitude" attaching to the Aaland Islands, the commission went so far as to question in general the existence of international servitudes and cited in support of this the decision in the North Atlantic Fisheries Arbitration. The commission would seem to have failed at least to appreciate the nature of a "negative servitude" such as the demilitarization of these islands would appear to be. However squeamish one may be concerning the use of the term *servitude*, with its unpleasant etymological connotation, there exist peculiar international situations constituting a distinct impairment of sovereignty which must be given a special classification. As Oppenheim remarked: "It is hardly to be expected that this opinion of the Court (Fisheries Arbitration) will induce theory and practice to drop the conception of State servitudes which is of great value."⁸

In reaching its conclusion that the special status of the Aaland Islands was of general European concern and not merely a domestic concern of Finland, the commission took note of the fact that the Soviet Government notified the Council of the League of Nations on the 3rd of October, 1919, and the 1st of July, 1920, that no decision concerning the disposition of the Aaland Islands could have any value unless Russia gave its assent.

It will be seen from the foregoing summary that while the main conclusion reached by the commission was inevitable and on the whole *pro*

⁶ *Idem.*, p. 5.

⁷ *Idem.*, p. 19.

⁸ International Law, 3d ed., p. 365.

forma, its report adumbrated matters of very great importance from the point of view of international law. It therefore warrants particular consideration and study.

PHILIP MARSHALL BROWN.

SAKUYEI TAKAHASHI

1865—1920

Within the memory of men now living, Japan opened its doors to Western civilization, and within the memory of those who are yet doing the world's work, Japan was admitted to full membership in the Society of Nations. Yet, short as is the time, Japan has produced, and unfortunately lost, an international lawyer of universal repute.

Sakuyei Takahashi—for the reference is to him—died on September 12, 1920, in the fifty-fifth year of his eventful life and useful career. His titles to respect were many and he is an exception to the rule that "a prophet is not without honor, save in his own country." He was Professor of International Law in the Imperial University at Tokyo; member of the House of Peers of the Imperial Diet of Japan; member of the Academy of Japan. He was the moving spirit of the Japanese Society of International Law, and was Editor in Chief of the *Japanese Review of International Law*.

He was also an Associate of the Institute of International Law.

Armed with the learning of the West, Mr. Takahashi possessed the poise and balance which come from experience with affairs. For example, in the War of 1894-5 between China and Japan, he was legal advisor to the admiral commanding the Japanese fleet. In the Russo-Japanese War of 1904-5, he was a member of the Legal Committee in the Department for Foreign Affairs. Therefore, his *Cases on International Law during the Chino-Japanese War*, published in English in 1899, and his *International Law Applied to the Russo-Japanese War*, with the decisions of the Japanese Prize Courts, published in 1908, have the value attaching to the work of a man who is not only learned in theory, but is chastened by practice.

To such an extent was sound learning combined with a capacity for business appreciated, that in the Okuma Cabinet he was appointed Director of the Bureau of Legislation, a governmental department charged with the work of drafting laws to be submitted to the Imperial Diet as measures of the government.

In him, the East and the West met and mingled; and nothing could be more delicate on Mr. Takahashi's part, or more interesting to the publicists of the Western World than dating, as he did, his *International Law Applied to the Russo-Japanese War*, "On the 15th of April, 1908, the 325th Anniversary of Hugo Grotius' birthday."

JAMES BROWN SCOTT.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD FROM DECEMBER 1, 1920, TO FEBRUARY 15, 1921.

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary Papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review. *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Cur. Hist.*, Current History (New York Times); *Daily digest*, Daily digest of reconstruction news; *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario oficial (Brazil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenossische gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin. *J. O.*, Journal officiel (France); *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice. *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

June, 1920.

- 11 PERU—URUGUAY. Convention concerning equivalents of studies and diplomas (exchange of students) signed July 18, 1918, approved by Uruguay. *P. A. U.*, Jan., 1921, p. 81.

October, 1920.

- 12 WAR SHIPS. Official list published showing disposition of each vessel in surrendered fleets of Austria and Germany. *Cur. Hist.*, Feb., 1921, 13 (pt. 2): 272.
- 17 OXFORD LETTER TO GERMAN INTELLECTUALS. Letter recommending reestablishment of friendly relations sent to professors of arts and sciences in Germany and Austria by a number of professors and doctors of Oxford University. Text: *Times*, Oct. 18, 1920.
- 18 AUSTRIA—FRANCE. France notified Austria that following treaties were again put into effect: Treaty of extradition of Nov. 13, 1855, and Protocol of Feb. 12, 1869; Declarations of reciprocity for fraud; Declaration of Aug. 29, 1392, on transmission of documents of the civil list. *Clunet*, Nov./Dec., 1920, p. 944.

November, 1920.

- 2 CALIFORNIA'S ALIEN LAND LAW. Referendum of Nov. 2 resulted in adoption by majority of 446-397. New law put into force on Dec. 10, 1920. Text of act: *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 119.

- 4 CZECHOSLOVAK REPUBLIC—FRANCE. Preliminary commercial treaty signed. *J. Int. Rel.*, Jan., 1921, p. 488.
- 6 CHILE—SWEDEN. Chile approved convention for arbitration of future differences. A Permanent Commission of Conciliation is to be appointed. *N. Y. Times*, Nov. 8, 1920, p. 22.
- 11 NEWFOUNDLAND—QUEBEC. Boundary dispute referred for settlement to the Judicial Committee of the Privy Council. *Times*, Dec. 7, 1920, p. 11.
- 12 BELGIUM—BRAZIL. Commercial treaty signed at Rio Janeiro whereby credit to Belgian Government of about \$16,000,000 was opened at Bank of Brazil for Belgian purchases of Brazilian goods. *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 117. Text: *P. A. U.*, March, 1921, p. 292.
- 13 CZECHO-SLOVAK REPUBLIC—SERB-CROAT-SLOVENE STATE. Preliminary convention for defensive alliance signed at Belgrade, Aug. 14, 1920, published. Text: *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 73.
- 14 NORWAY—PORTUGAL. By exchange of notes agreement made not to discriminate against commerce and shipping of either country without advance notice of three months. *D. G.*, Dec. 10, 1920, Ser. I, p. 1694.
- 15 DANZIG. Constitution declared. *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 80.
- 15 DANZIG—POLAND. Convention signed at Paris regarding diplomatic and commercial relations. Summary: *Bd. of Trade J.*, Jan. 27, 1921, p. 95.
- 15 NORWAY—SPAIN. Norway gave requisite three months' notice to terminate commercial conventions of June 27, 1892, and Aug. 25, 1903. *Ga. de Madrid*, Nov. 15, 1920, p. 722; *Bd. of Trade J.*, Jan. 6, 1921, p. 14.
- 18 GREECE—SPAIN. Convention signed at Madrid on March 6, 1919, regulating rights of inheritance of deceased nationals, ratified by both countries. *Ga. de Madrid*, Dec. 3, 1920, p. 952.
- 19 to Dec. 31. RAPALLO TREATY, Nov. 12, 1920. Ratification voted by Cabinet of Serb-Croat-Slovene State on Nov. 19. *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 65. Approved by law and royal decree in Italy on Dec. 19, 1920. D'Annunzio yielded control of Fiume to Italy on Dec. 29, 1920. *Cur. Hist.*, Feb., 1921, 13 (pt. 2): 223. Protocol effecting settlement of Fiume question signed on Dec. 31, 1920. *N. Y. Times*, Jan. 1, 1921, p. 6.
- 20 GREAT BRITAIN—SOVIET RUSSIA. British draft of proposed trade agreement handed to Krassin on Nov. 20 by Lloyd George. Text: *Cur. Hist.*, Jan., 1921, p. 76; *Bd. of Trade J.*, Jan. 27, 1921, p. 88. Note from Tchitcherin to Curzon requested a political conference. Text (in part): *Temps*, Dec. 14, 1920, p. 4. Text of Tchitcherin's telegram of Dec. 31 to British Government and reply of Lord Curzon of Jan. 6, 1921, made public. *Times*, Jan. 7, 1921, p. 9. Note of

- Feb. 5 addressed to Lord Curzon by M. Tchitcherin on proposed trade agreement stated main obstacle to signing agreement and insisted on political negotiations. Summary: *Times*, Feb. 7, 1921, p. 10.
- 26 MESOPOTAMIAN MANDATE. Note of Nov. 20, 1920, which United States addressed to Great Britain on subject of mandate and oil made public. Text: *Contemp. R.*, Feb., 1921, p. 245; *Adv. of Peace*, Dec., 1920, p. 390.
- 28 INTERNATIONAL SOCIAL-DEMOCRATIC CONGRESS. Opened at Prague. *Temps*, Nov. 30, 1920, p. 2.
- 29 INTERALLIED CONGRESS OF COMBATANTS. Opened in Paris, for discussion of uniform laws relating to war veterans, wounded soldiers, widows, and orphans. *Temps*, Nov. 30, 1920, p. 2.
- 30 FRANCE—GERMANY. Decree issued, announcing exchange of ratifications of treaty concerning Alsace-Lorraine signed at Baden-Baden, May 5, 1920, and putting it into effect. *J. O.*, Dec. 5, 1920, p. 19818.
- 30 FRANCE—VATICAN. After vigorous debate in French Chamber, the project for resumption of relations with the Vatican was adopted by vote of 387 to 210. *Times*, Dec. 1, 1920, p. 11.

December, 1920.

- 1 ARMENIA. Offers to mediate to save Armenia, made by President Wilson, Premier Dato of Spain and Foreign Minister Marquez of Brazil, placed before Council of League of Nations. *N. Y. Times*, Dec. 2, 1920, p. 1.
- 1 FRANCE—GERMANY. Decree issued putting into effect the agreement relative to Rhine bridges, signed at Baden-Baden on July 1, 1920. Ratified on Nov. 20, 1920. *J. O.*, Dec. 2, 1920, p. 19630.
- 1 INTERNATIONAL DANUBE COMMISSION. Began sessions in Vienna. *Press notice*. Dec. 8, 1920.
- 1 MEXICO. General Obregon inaugurated as President. *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 112.
- 1 MEXICO. New Mexican Government recognized by Japan. *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 113.
- 1 MEXICO—UNITED STATES. Secretary Colby's proposal of Nov. 25, 1920, for commission to draft treaty as basis for resumption of diplomatic relations, made public. Text: *Wash. Post.*, Dec. 1, 1920, p. 1.
- 2 GREECE. Allies sent note warning Greece that recall of Constantine would create unfavorable situation. Text: *N. Y. Times*, Dec. 3, p. 1; *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 64.
- 2 LICHTENSTEIN—SWITZERLAND. Agreement concluded under which Switzerland will operate the Lichtenstein postal, telegraph and telephone systems, beginning Jan. 1, 1921. *Evening Star*, Dec. 2, 1920, pt. 2, p. 2.

- 3 ARMENIA. Announced that Armenian Republic had resumed friendly relations with Soviet Russia. *Adv. of Peace*, Dec., 1920, p. 388.
- 3 ARMENIA—TURKEY. Peace treaty signed at Alexandropol, reducing Armenian territory to the district of Erivan and Lake Gochka. *N. Y. Times*, Dec. 10, 1920, p. 1.
- 3 MILITARY, NAVAL AND AIR COMMISSION OF THE LEAGUE. League Council on Dec. 3 invited United States to name representative in consultative capacity. *Press notice*, Dec. 3, 1920. State Department declined invitation on Dec. 8, 1920. *Press notice*, Dec. 8, 1920.
- 4 CENTRAL AMERICAN UNION. Conference of delegates from Guatemala, Salvador, Nicaragua, Honduras and Costa Rica, met at San José, Costa Rica, to form a confederation. *Press notice*, Dec. 3, 1920.
- 4 LEAGUE OF NATIONS ASSEMBLY. Argentine delegation withdrew from the Assembly pending acceptance of its recommendations for changes in Covenant. *N. Y. Times*, Dec. 5, 1920, p. 1.
- 5-8 INTERNATIONAL SOCIALIST CONFERENCE. Preliminary meeting held at Berne. *Wash. Post*, Dec. 9, 1920, p. 3.
- 5 MEXICO. New Mexican administration recognized by Brazil. *Cur. Hist.*, Jan., 1921, 13 (pt. 2) : 113.
- 6 GREECE. Plebiscite results showed majority of about 99% in favor of recalling King Constantine. *Times*, Dec. 7, 1920, p. 11.
- 7 ARMENIA. President Wilson in his message asked Congress to authorize loan to Armenia. *Cong. Record*, Dec. 7, 1920, p. 26.
- 7 CHINA—MEXICO. Commercial treaty cancelled, pending new agreement. *Wash. Post*, Dec. 8, 1920, p. 1.
- 7 DANZIG. Constituent Assembly of Danzig proclaimed itself the Parliament of the Free City under title of "Folkstag," with powers to enact legislation until 1923. Dr. Sahn, former Burgomaster, elected President of the Senate, became first president of the Free City of Danzig. *Cur. Hist.*, Jan., 1921, 13 (pt. 2) : 80.
- 7 JAPAN—MEXICO. Recognition of Mexican Government by Japan announced. *Wash. Post*, Dec. 9, 1920, p. 3.
- 8 FRANCE—UNITED STATES. Details of Western Union cable dispute with France made public. *N. Y. Times*, Dec. 8, 1920, p. 1.
- 9 AUSTRIA (REPUBLIC). Dr. Michael Hainisch elected first constitutional president. *N. Y. Times*, Dec. 10, 1920, p. 14.
- 9 AUSTRIAN PEACE TREATY, ST. GERMAIN-EN-LAYE, Sept. 10, 1919. Ratifications deposited at Paris by Belgium, Cuba, Rumania and Serb-Croat-Slovene State. *J. O.*, Dec. 9, 1920, p. 20154.
- 9-23 BULGARIAN PEACE TREATY, NEUILLY-SUR-SEINE, Nov. 27, 1919. Ratifications deposited by Greece, Roumania and Serb-Croat-Slovene State on Dec. 9. *J. O.*, Dec. 9, 1920, p. 20154. Senate of Czechoslovakia agreed to ratification on Dec. 23 1920. *Temps*, Dec. 25, 1920, p. 1.

- 9 COPYRIGHT PROCLAMATION. Signed by President Wilson. Grants to subjects of Denmark the protection of American copyright law of Mar. 4, 1909, and acts amendatory thereof. *Press notice*, Dec. 14, 1920.
- 9 EGYPTIAN COMMISSION. Presented unanimous report to British Government on recognition of independence, etc. Principal recommendations: *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 92.
- 9 to Jan. 3, 1921. GERMAN DISARMAMENT. Note sent by Germany to Allies on Dec. 9 dealing with disarming and disbanding of the self-defense organizations (Einwohnerwehr) stated that German Government has never recognized that as an international obligation. Text (in part): *Times*, Dec. 11, p. 9. Reply of Interallied Military Commission repeated the demand. Summary: *Temps*, Dec. 16, 1920, p. 1. Officially reported in Berlin on Dec. 26 that German Regular Army had been reduced to 100,000 officers and men. Berlin dispatch of Jan. 2, 1921, said there were only 90,000 in actual service and that armed police force was less than 150,000. *Cur. Hist.*, Feb., 1921, 13 (pt. 2): 226. French Government in note to Germany on Dec. 31, 1920, said Interallied Military Control Commission had not been able to verify such reduction. Reply of Jan. 3, 1921, reasserted Germany's desire to live up to Spa agreement. Text of notes: *Temps*, Jan. 5, 1921, pp. 1, 4.
- 9 GERMAN PEACE TREATY, VERSAILLES, June 28, 1919. Ratifications deposited at Paris by Honduras, Nicaragua and Rumania. *J. O.*, Dec. 9, 1920, p. 20154.
- 10 ARMENIA. President Wilson's award concerning boundaries delivered to French Foreign Office. *Wash. Post*, Dec. 11, 1920, p. 3; *Cur. Hist.*, Feb., 1921, 13 (pt. 2): 339.
- 10 NOBEL PEACE PRIZES. Prize for 1919 awarded to Leon Bourgeois of France, and for 1920 to Woodrow Wilson. Text of Wilson's acceptance: *N. Y. Times*, Dec. 11, 1920, p. 11.
- 11 ARGENTINE REPUBLIC—CHILE—COLOMBIA. Notes exchanged between Argentina and Chile and Colombia, made public by Argentina, show that Chile and Colombia approve Argentina's position on amendments to League of Nations Covenant. *N. Y. Times*, Dec. 12, 1920, p. 2.
- 11 BULGARIA. Admitted to League of Nations. *L. N. A. J.*, Dec. 12, 1920, No. 25.
- 11 FRANCE—GREAT BRITAIN. Summary of agreement regarding aerial navigation made public. *Times*, Dec. 13, 1920, p. 13.
- 11 MEXICO. Holland resumed full diplomatic relations with Mexico. *Wash. Post*, Dec. 15, 1920, p. 5.

- 12 FRANCE. Decree issued creating a body of controlling counsellors to administer the mandate in Syria and Lebanon. *J. O.*, Dec. 16, 1920, p. 20815.
- 12 SERB-CROAT-SLOVENE STATE. Constituent Assembly convened for purpose of drawing up a constitution for either a Federated Yugoslavia or a Greater Serbia. *Cur. Hist.*, Jan., 1921, 13 (pt. 2): 65.
- 13 HOLLAND—SERB-CROAT-SLOVENE STATE. Diplomatic relations broken off because of treatment of Dutch Consul at Belgrade. *Times*, Dec. 14, 1920, p. 11.
- 13 PERMANENT COURT OF INTERNATIONAL JUSTICE. Draft statute as amended approved by Assembly. [Before the Assembly had adjourned, 40 states had approved and 22 nations had signed the project, the exact number necessary to bring the Court into being as soon as signatures have been followed by ratification.] *L. N. A. J.*, Dec. 14, 1920, No. 27.
- 14 GERMAN INDEMNITY. Germany suspended payments to Entente through German Clearing Office. *N. Y. Times*, Dec. 15, 1920, p. 3.
- 14 INTERNATIONAL COMMUNICATIONS CONFERENCE. Temporary agreement reached on cable operation. Final action postponed until March 15. Conference ended. *N. Y. Times*, Dec. 15, 1920, p. 2.
- 14 INTERNATIONAL CREDITS COMMISSION. Established by Economic Section of the League to provide security for sale of products. *N. Y. Times*, Dec. 15, 1920, p. 1. Text of revised Ter Meulen scheme: *Federal Reserve B.*, Feb., 1921, p. 181.
- 14 LEAGUE OF NATIONS COUNCIL. Four non-permanent members of Council elected at 25th plenary meeting of the Assembly, viz., Spain, Brazil, Belgium, and China. *L. N. A. J.*, Dec. 16, 1920, No. 31.
- 15 AUSTRIA (REPUBLIC). Admitted to League of Nations. *L. N. A. J.*, Dec. 16, 1920, No. 31.
- 15 GERMAN COLONIES. British Government issued declaration concerning mandates for former German colonies. Text: *Temps*, Dec. 16, 1920, p. 1.
- 15 SLESVIG TREATY. Ratifications of treaty signed at Paris on July 5, 1920, by France, Great Britain, Italy, Japan and Denmark, were deposited at Paris on Dec. 15, 1920, and promulgated in France on Dec. 19, 1920. Text of treaty and decree: *J. O.*, Dec. 21, 1920, p. 21183.
- 16 COSTA RICA. Admitted to League of Nations. *L. N. A. J.*, Dec. 17, 1920, No. 32.
- 16 FINLAND. Admitted to League of Nations. *L. N. A. J.*, Dec. 17, 1920, No. 32.
- 16-23 INTERNATIONAL TECHNICAL CONFERENCE. Representatives of principal Allied Powers and of Germany met in Brussels to discuss methods of enabling Germany to pay reparations. *Cur. Hist.*, Feb.,

- 1 MEXICO—UNITED STATES. Period in which claims against Mexico may be presented to Mexican Claims Commission has been extended for one year. *Press notice*, Feb. 1, 1921.
- 1 SALVADOR. Decree made public cancelling governmental intervention in German properties, adopted as a war measure. *Wash. Post*, Feb. 2, 1921, p. 6.
- 3 CUBA. Presidential decree suspended concession granted Western Union Telegraph Company for connecting up its Barbados cable at Cojimar or elsewhere on the Cuban coast. *Wash. Post*, Feb. 4, 1921, p. 5.
- 3 GEORGIA—POLAND. Poland recognized the independence *de jure* of Georgia. *Temps*, Feb. 5, 1921, p. 1.
- 3 GERMAN WAR CRIMINALS. Announced that German Imperial Court of Justice has concluded preliminaries in regard to the first eleven war criminals named by the Allies, and the prosecution is to be proceeded with in four of the cases. Trials expected to begin in March. *Times*, Feb. 4, 1921, p. 9.
- 3 MESOPOTAMIAN MANDATE. British draft, to be presented to League of Nations Council on Feb. 22, 1921, made public. Text: *Times*, Feb. 3, 1921, p. 10.
- 4 GERMAN COAL DELIVERIES. Germany sent statement to Allies of impossibility of continuation by Germany, after Feb. 1, 1921, of coal deliveries on scale prescribed by Spa agreement. *Times*, Feb. 5, 1921, p. 8.
- 4 PALESTINE MANDATE. Draft of British mandate for Palestine made public. Text: *Times*, Feb. 5, 1921, p. 7; *N. Y. Times*, Feb. 28, 1921, p. 6.
- 5 FRANCE—GUATEMALA. Presidential decree issued approving the agreement signed in Paris, Nov. 23/Dec. 2, 1920, providing for a French military mission to Guatemala. *Guatemalteco*, Feb. 12, 1921, p. 97.
- 5 FRANCE—TURKEY. French Government received note from Mustapha Kemal, Turkish Nationalist leader, stating that he is the real Turkish government, and that Constantinople cabinet does not represent Turkish opinion. *N. Y. Times*, Feb. 6, 1921, p. 7.
- 6 DENMARK—ESTHONIA. Denmark recognized independence *de jure* of Esthonia. *Temps*, Feb. 7, 1921, p. 1.
- 6 DENMARK—LATVIA. Denmark recognized independence *de jure* of Latvia. *Temps*, Feb. 7, 1921, p. 1.
- 6 ESTHONIA—SWEDEN. Sweden recognized independence *de jure* of Esthonia. *Temps*, Feb. 7, 1921, p. 1.
- 6 LATVIA—SWEDEN. Sweden recognized independence *de jure* of Latvia. *Temps*, Feb. 7, 1921, p. 1.

- 7 GREAT BRITAIN. India Treaty of Peace (Austria) Order issued putting into effect sections III-VII and annexes to sections III-VI of the Austrian Peace Treaty. *Lond. Ga.*, Feb. 15, 1921, p. 1265.
- 7 SWITZERLAND. Federal Council refused permission to cross Switzerland to armed forces sent by League of Nations to maintain order in Vilna during forthcoming plebiscite. *Wash. Post*, Feb. 8, 1921, p. 1.
- 8 CENTRAL AMERICAN UNION. Announced that Nicaragua will send diplomatic mission to Costa Rica, Salvador, Guatemala and Honduras to clear up points causing withdrawal from conference. *N. Y. Times*, Feb. 10, 1921, p. 6.
- 8 SOUTH AFRICAN ELECTIONS. General election held, resulting in great victory for General Smuts and decision not to secede from the British Empire. *Times*, Feb. 14, 1921, p. 9; *Cur. Hist.*, Mar., 1921, 13 (pt. 2): 500.
- 9 AUSTRALIA. Mandate for former German Islands in Pacific south of equator made public. Text: *Times*, Feb. 9, 1921, p. 9.
- 9 BOLIVIA. Government recognized by Argentina, Brazil, Chile and United States. *Press notice*, Feb. 8, 1921.
- 9 GERMAN REPARATIONS AGREEMENT. Ratified by French Chamber of Deputies, 395 to 83. *Wash. Post*, Feb. 10, 1921, p. 1.
- 9 GERMAN SOUTH WEST AFRICA MANDATE. Terms made public of mandate, which has been administered for past four years by the Union of South Africa as the "South-West Protectorate." (With names altered, it also applies to Samoa, Nauru and the former German islands in the Pacific south of the equator.) Text: *Times*, Feb. 9, 1921, p. 9.
- 9 JAPAN. Declaration of Japan relative to category of mandates and Article XXII of the Peace Treaty, published by League of Nations Council. *N. Y. Times*, Feb. 9, 1921, p. 15; *Times*, Feb. 9, 1921, p. 9.
- 9 POLAND—SOVIET RUSSIA. Treaty of peace signed at Riga. *Times*, Feb. 11, 1921, p. 10.
- 10 LITHUANIA—SOVIET RUSSIA. Russian Government notified Lithuania that it will be considered an act of hostility if a League of Nations army is allowed to occupy Vilna district pending plebiscite. *Wash. Post*, Feb. 11, 1921, p. 3.
- 11 GERMANY—GREAT BRITAIN. Official communiqué issued in Berlin concerning an arbitration treaty concluded between Germany and Great Britain regarding interpretation of Peace Treaty with reference to demands of British subjects for return of liquidated property. *Times*, Feb. 15, 1921, p. 10.
- 11 INTERNATIONAL COMMUNICATIONS CONFERENCE. Reconvened in Washington after interim of two months. *Wash. Post*, Feb. 12, 1921, p. 4.
- 12 AUSTRIA—GERMANY. Exchange of ratifications of provisional economic agreement took place at Vienna. *Temps*, Feb. 14, 1921, p. 4.

- 15 FRANCE—GERMANY. Ratifications exchanged at Berlin of the convention of Mar. 3, 1920, relative to pensions to inhabitants of Alsace and Lorraine. *Temps*, Feb. 17, 1921, p. 1; *J. O.*, Feb. 18, 1921, p. 2090.
- 16 CHINA—UNITED STATES. State Department sent warning to China concerning cancelling wireless plant contract of Federal Telegraph Company at Shanghai. *N. Y. Times*, Feb. 17, 1921, p. 4.
- 16 NORWAY—UNITED STATES. Norway asked State Department to submit to arbitration the claims of Norwegian ship owners for \$14,000,000 for vessels requisitioned during the war. *Wash. Post*, Feb. 17, 1921, p. 1.
- 17 JAPAN MANDATE. State Department received draft form of mandate for Pacific Islands in North Pacific formerly belonging to Germany, awarded to Japan and approved by League Council on Dec. 17, 1920. *N. Y. Times*, Feb. 18, 1921, p. 3.

INTERNATIONAL CONVENTIONS

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908.

Adhesion:

Greece. Nov. 9, 1920. *Monit.*, Dec. 20/21, 1920, p. 10270.

CUSTOMS TARIFFS PUBLICATION. Brussels, July 5, 1890.

Adhesion:

Poland. Dec. 11 (?), 1920. *D. G.*, Dec. 14, 1920, Ser. I, p. 1716.

LETTERS, ETC., OF DECLARED VALUE. Rome, May 26, 1906.

Adhesion:

Government of the Sarre Basin Territory. Sept. 9, 1920. *Monit.*, Nov. 10, 1920, p. 9012.

Morocco (Spanish protectorate). Oct. 14, 1920. *Monit.*, Nov. 26, 1920, p. 9460.

MONEY ORDERS. Rome, May 26, 1906.

Adhesion:

Morocco (Spanish protectorate). Nov. 14, 1920. *Monit.*, Nov. 26, 1920, p. 9460.

PARCEL POST CONVENTION. Rome, May 26, 1906.

Adhesion:

Government of the Sarre Basin Territory. Sept. 9, 1920. *Monit.*, Nov. 10, 1920, p. 9012.

Morocco (Spanish protectorate). Oct. 14, 1920. *Monit.*, Nov. 26, 1920, p. 9460.

PATENT BUREAU. Brussels (?), Nov. 15, 1920.

Signed:

France, Belgium, Brazil and nine other countries. *Cur. Hist.*, Feb., 1921, 13 (pt. 2): 346.

POSTAL SUBSCRIPTIONS TO NEWSPAPERS. Rome, May 26, 1906.

Adhesion:

Government of the Sarre Basin Territory. Sept. 9, 1920. *Monit.*,
Nov. 10, 1920, p. 9012.

Morocco (Spanish protectorate). Oct. 14, 1920. *Monit.*, Nov. 26,
1920, p. 9460.

PROTECTION OF INDUSTRIAL PROPERTY [affected by World War]. Berne,
June 30, 1920.

Adhesion:

Austria. Oct. 27, 1920. *Deutsch. Reichs.*, Dec. 8, 1920.

Brazil. Oct. 9, 1920. *Deutsch. Reichs.*, Dec. 8, 1920.

Ceylon. Nov. 25, 1920. *Deutsch. Reichs.*, Jan. 22, 1921.

Japan. Nov. 17, 1920. *Deutsch. Reichs.*, Jan. 22, 1921.

Norway. Nov. 27, 1920. *Deutsch. Reichs.*, Jan. 22, 1921.

Spain. Oct. 6, 1920. *Deutsch. Reichs.*, Dec. 8, 1920.

Trinidad. Nov. 25, 1920. *Deutsch. Reichs.*, Jan. 22, 1921.

Ratification:

Czecho-Slovak Republic. Nov. 1, 1920. *Deutsch. Reichs.*, Dec. 8,
1920.

RADIOTELEGRAPH CONVENTION. London, July 5, 1912. Service Regulations,
London, 1912.

Adhesion:

China. Oct. 22, 1920. *Monit.*, Nov. 26, 1920, p. 9460.

Venezuela. Oct. 22, 1920. *Monit.*, Nov. 26, 1920, p. 9460.

SERVICE DES RECouvreMENTS. Rome, May 26, 1906.

Adhesions:

Government of the Sarre Basin Territory. Sept. 9, 1920. *Monit.*,
Nov. 10, 1920, p. 9012.

Morocco (Spanish protectorate). Oct. 14, 1920. *Monit.*, Nov. 26,
1920, p. 9460.

TELEGRAPH. St. Petersburg, July 22, 1875. Supplement, Lisbon, June 11,
1908.

Adhesion:

Government of the Sarre Basin Territory. Oct. 19, 1920. *Monit.*,
Nov. 26, 1920, p. 9460.

UNIVERSAL POSTAL CONVENTION. Rome, May 26, 1906.

Adhesion:

Government of the Sarre Basin Territory. Sept. 9, 1920. *Monit.*,
Nov. 10, 1920, p. 9012.

Morocco (Spanish protectorate). Oct. 14, 1920. *Monit.*, Nov. 26,
1920, p. 9460.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Anglo-German Mixed Arbitral Tribunal constituted under Art. 304 of Treaty of Versailles, Rules of procedure of. (S. R. & O. 1920, 2062.) 3½d.

Austrian Peace Treaty. Egypt Order in Council, Oct. 13, 1920. S. R. & O. 1920, 2082.) 1½d.

Copyright of German and Austrian nationals vested in Custodian. Order of Board of Trade as to "Vested Copyright" and "Restored Copyright," Nov. 9, 1920. (S. R. & O. 1920, 2119.) 2½d.

Copyright. Treaties of Peace Copyright Rules, Nov. 29, 1920. (S. R. & O. 1920, 2246.) 3½d.

Diplomatic, consular and commercial selection committee, Report on proceedings of. (Cmd. 1052.) 2d.

Enemy funds in court. Supreme Court Funds Rules, Dec. 11, 1920. (S. R. & O. 1920, 2288.) 1½d.

Estonia, Agreement with government of, respecting commercial relations, London, July 20, 1920. (Treaty series, 1920, No. 19.) 1½d.

Industrial property, Agreement respecting the preservation or restoration of the rights of, affected by the World War. (Treaty series, 1920, No. 18.) 2d.

League of Nations. Copy of provisional agenda for first session of the Assembly. (Cmd. 1020.) 1½d.

Merchant Shipping Convention Act, 1914, Order in Council further postponing the coming into operation of, until July 1, 1921. Dec. 3, 1920. (S. R. & O. 1920, 2297.) 1½d.

Mesopotamia. Review of the civil administration. (Cmd. 1061.) 2s. 4d.

Netherlands, Treaty between United Kingdom and, respecting extradition between certain British-protected states in the Malay Peninsula and the Netherlands. (Treaty series, 1920, No. 14.) 1½d.

———. Convention between the United Kingdom and, renewing the arbitration convention of Feb. 15, 1920. Signed at London, June 1, 1920. (Treaty series, 1920, No. 15.) 1½d.

Patents of Austrian and Bulgarian nationals vested in Custodian. Order of Board of Trade as to "Vested Patents," "Vested Applications," and "Restored Patents," Nov. 9, 1920. (S. R. & O. 1920, 2118.) 2½d.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

Patents, designs, and trade-marks. Order in Council applying Sec. 91 of Act of 1907, as amended, to Roumania. (S. R. & O. 1920, 1992.) 1½d.

Patents (Treaties of Peace—Austria and Bulgaria). Rules, Nov. 29, 1920. (S. R. & O. 1920, 2247.) 1½d.

Peace Handbooks prepared under the direction of the Historical Section of the Foreign Office:

Vol. IV, The Balkan States (cloth ed.), 15s. 7½d.

Vol. IX, The Russian Empire (cloth ed.), 15s. 7½d.

Vol. XI, Turkey in Asia (cloth ed.), 15s. 6½d.; No. 61, Arabia, 3s. 2d.;

No. 62, Armenia and Kurdistan, 2s. 2d.; No. 63, Mesopotamia, 3s. 2d.;

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65, Cyprus, 2s. 1½d.; No. 66, France and the Levant, 1s. 1½d.

Vol. XV, British possessions in Africa (1): No. 89, Partition of Africa,

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Morocco, 1s. 1½d.; No. 123, Canary Islands, 1s. 1½d.; No. 124,

Spanish Sahara, 1s. 1½d.; No. 125, Spanish Guinea, 1s. 7½d.; No.

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the Pacific, 1s. 1½d.; Nos. 140 and 143, Galapagos and Juan Fernan-

dez Islands, 1s. 7½d.; Nos. 141 and 142, Malpelo, Cocos and Easter

Islands, 1s. 7½d.; No. 144, British possessions in Oceania, 3s. 2d.;

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GEORGE A. FINCH.

² Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

AMERICAN AND BRITISH CLAIMS ARBITRATION TRIBUNAL¹

[Arbitrators: M. Henri Fromageot, Sir Charles Fitzpatrick,
Hon. Chandler P. Anderson]

IN THE MATTER OF H. J. RANDOLPH HEMMING

CLAIM No. 8

Decision rendered December 18, 1920

This is a claim presented by His Britannic Majesty's Government on behalf of Henry Joseph Randolph Hemming for \$2,000 and \$1,280 for sixteen years' interest at 4 per cent, and also for such further compensation as this Tribunal may think right.

This claim is on account of professional services rendered as a lawyer by H. J. Randolph Hemming at the request of the United States Consul at Bombay in December, 1894, January and February, 1895, in the prosecution of certain persons accused of counterfeiting United States gold coin in India.

The Government of the United States admits the employment of Hemming by its Consul and the rendering by him of some legal services. It does not deny the American Consul's clear right to prevent, if possible, the counterfeiting of American coin in India by setting in motion the machinery of police and prosecution, but it contends that the Consul had no legal authority to employ private counsel on behalf of his Government, for the performance of duties which might well have been carried out by the public officials of the crown.

As to the facts:

It appears from the documents in the case, that on December 13 and 15, 1894, the United States Consul at Bombay informed the Secretary of State of the counterfeiting of American gold dollars in India and asked for instructions, and that, in the absence of any reply, he further informed him on December 22 and January 5 and 26, 1895, of the steps which he was taking to put an end to the counterfeiting and for the prosecuting of the offenders, of the employment of a lawyer, and also of the various legal services and assistance rendered in the matter by the said Hemming.

¹ Previous decisions of the Tribunal are printed in this JOURNAL, Vol. 13, pp. 875-890. Vol. 14, pp. 650-665.

On January 30, 1895, the Secretary of State in reply forwarded some technical remarks of the Treasury Department as to the counterfeiting and made no objection to or criticism of the steps which had been taken.

On February 2 and May 11, 1895, the Consul forwarded to the Secretary of State further information as to the progress of the prosecution he had initiated and the employment of the attorney and finally communicated to his Government the decision of the Indian court, and asked for instructions as to an appeal.

By a letter dated July 2, 1895, the Secretary of State, still acting in conjunction with the Secretary of the Treasury, negatived the suggestion of an appeal. As before, he made no criticism of, nor did he refer in any way to, the employment of Hemming.

The legal proceedings thus came to an end, and the Consul, by a letter dated August 2, 1895, reported to the Secretary of State the request of Hemming for a fee of \$2,000, but recommended a fee of \$500.

It is shown by the documents that the United States Government decided not to pay Hemming the fee recommended by the Consul on the ground that his employment was unauthorized, and would not have been sanctioned. There is no evidence that this decision was communicated to Hemming either by the United States Government or by its Consul.

In 1904, Hemming, who had in the meantime given up practice in India and returned to England, addressed the American Embassy in London through Merton & Steele, solicitors in London. But it appears from the documents that the United States Government, on the receipt through the Embassy of this new request, adhered to its decision that as the records did not show any authorization for the employment of counsel, or for the incurring of expense in connection with the case, the claim could not be paid. There is no evidence that this decision was communicated by the United States Government, or by its Embassy, either to Hemming or to his solicitors.

In 1908 Hemming went to Washington to endeavor to secure payment. There he obtained the presentation before Congress of some bills which were favorably reported upon, at first for \$500, finally, after hearing Hemming's explanation, for \$2,000. But they had not passed when the claim was brought before this Tribunal.

It was only in April, 1910, that Hemming appealed to His Britannic Majesty's Government for assistance in procuring redress, and it is said that the claim was accordingly recommended informally to the State Department by the British Ambassador at Washington.

As to the law:

Whatever at the outset was the authority of the United States Consul, to employ an attorney at the expense of the United States Government, it is plain, from the correspondence referred to above, that that Government was perfectly well aware, after its Consul's letter of December 22, 1894,

received January 14, 1895, of Hemming's employment in a prosecution initiated solely for its benefit, that it did not object in any way whatever during the progress of the case to the steps taken by its Consul, but appeared implicitly at all events to approve of those steps and of Hemming's employment.

This Tribunal is, therefore, of opinion that the United States is bound by the contract entered into, rightly or wrongly, by its Consul for its benefit and ratified by itself.

As to the amount of the claim:

There is no evidence that any specific sum was ever agreed upon as a fee to be paid to Hemming.

As has been shown, the American Consul first recommended a sum of \$500. The same sum was accordingly recommended in 1910 as equitable to the Committee of Claims of the House of Representatives by the Secretary of State and favorably reported upon in 1910 by that Committee. Subsequently, in 1912, after a close investigation into Hemming's claim, the same Committee suggested a sum of \$2,000 in full settlement.

This Tribunal, taking into consideration the services rendered, and the expense and trouble undergone by Hemming, as well as the delay in payment, thinks that the sum of two thousand five hundred dollars (\$2,500) is sufficient in full settlement of the claim, without interest.

For These Reasons:

This Tribunal decides that the Government of the United States must pay to the Government of His Britannic Majesty, for the benefit of Henry Joseph Randolph Hemming, the sum of two thousand five hundred dollars (\$2,500) without interest.

For the Tribunal,

(Signed) HENRI FROMAGEOT,
President.

IN THE MATTER OF THE HOME MISSIONARY SOCIETY

CLAIM No. 11

Decision rendered December 18, 1920

This is a claim for \$78,068.15, together with interest thereon from May 30, 1898, presented by the United States Government on behalf of an American religious body known as the "Home Frontier and Foreign Missionary Society of the United Brethren in Christ." The claim is in respect of losses and damages sustained by that body and some of its members during a native rebellion in 1898 in the British Protectorate of Sierra Leone.

The facts are few and simple.

In 1898 the collection of a tax newly imposed on the natives of the Protectorate and known as the "Hut tax" was the signal for a serious

and widespread revolt in the Ronietta District. The revolt broke out on April 27th, and lasted for several days. As is common in the more uncivilized parts of Africa it was marked by every circumstance of cruelty and by indiscriminating attacks on the persons and properties of all Europeans.

In the Ronietta District, which was the center of the rebellion, the Home Missionary Society had several establishments,—the Bompeh Mission at Rotofunk and Tiama, Sherbro-Mendi Mission at Shengeh, Avery Mission at Avery, and Imperreh Mission at Danville and Momaligi.

In the course of the rebellion all these missions were attacked, and either destroyed or damaged, and some of the missionaries were murdered.

The rising was quickly suppressed, and law and order enforced with firmness and promptitude. In September, October and November such of the guilty natives as could be caught were prosecuted and punished. (British Answer, Annexes 15, 16, and 17.)

A Royal Commissioner was appointed by the British Government to inquire into the circumstances of the insurrection and into the general position of affairs in the Colony and Protectorate.

On the receipt of his report, as well as of one from the Colonial Governor, the Secretary of State for the Colonies came to the conclusion that, though some mistakes might have been made in its execution, the line of policy pursued was right in its main outlines and that the scheme of administration, as revised in the light of experience, would prove a valuable instrument for the peaceful development of the Protectorate and the civilization and well-being of its inhabitants (British Blue Book, Sierra Leone, C. 9388 of 1899, Part 1, p. 175).

On February 21, 1899, the United States Government (British Answer, Annex 39), through its Embassy in London, brought the fact of the losses sustained by the Home Missionary Society to the attention of the British Government. In his reply on October 14, 1899, Lord Salisbury repudiated liability on behalf of the British Government, with an expression of regret that sensible as it was of the worth of the services of the American missionaries, there was no fund from which, as an act of grace, compensation could be awarded.

The contention of the United States Government before this Tribunal is that the revolt was the result of the imposition and attempted collection of the "Hut tax"; that it was within the knowledge of the British Government that this tax was the object of deep native resentment; that in the face of the native danger the British Government wholly failed to take proper steps for the maintenance of order and the protection of life and property; that the loss of life and damage to property was the result of this neglect and failure of duty, and therefore that it is liable to pay compensation.

Now, even assuming that the "Hut tax" was the effective cause of the

native rebellion, it was in itself a fiscal measure in accordance not only with general usage in colonial administration, but also with the usual practice in African countries (Wallis, *Advance of our West African Empire*, p. 40).

It was a measure to which the British Government was perfectly entitled to resort in the legitimate exercise of its sovereignty, if it was required. Its adoption was determined by the course of its policy and system of administration. Of these requirements it alone could judge.

Further, though it may be true that some difficulty might have been foreseen, there was nothing to suggest that it would be more serious than is usual and inevitable in a semi-barbarous and only partially colonized protectorate, and certainly nothing to lead to any apprehension of widespread revolt.

It is a well-established principle of international law that no government can be held responsible for the acts of rebellious bodies of men committed in violation of its authority, where it is itself guilty of no breach of good faith, or of no negligence in suppressing insurrection. (Moore's *International Law Digest*, Vol. VI, p. 956; VII, p. 967; Moore's *Arbitrations*, pp. 2991-92; British Answer, p. 1.)

The good faith of the British Government cannot be questioned, and as to the conditions prevailing in the Protectorate, there is no evidence to support the contention that it failed in its duty to afford adequate protection for life and property. As has been said with reference to circumstances very similar, "It would be almost impossible for any government to prevent such acts by omnipresence of its forces" (Sir Edward Thornton, Moore's *Arbitrations*, pp. 3-38).

It is true that the Royal Commissioner criticized in his report the mode of application of certain measures. But there is no evidence of any criticisms directed at the police organization, or the measures taken for the protection of Europeans. On the contrary, it is clear that from the outbreak of the insurrection the British authorities took every measure available for its repression. Despite heavy losses, the troops in the area of revolt were continually increased. But communication was difficult; the risings occurred simultaneously in many districts remote from one another and from any common center, and it was impossible at a few days' or a few hours' notice to afford full protection to the buildings and properties in every isolated and distant village. It is impossible to judge the system of police and protection of life and property in force in the savage regions of Africa by the standard of countries or cities which enjoy the social order, the respect for authority, and the settled administration of a high civilization. A government cannot be held liable as the insurer of lives and property under the circumstances presented in this case. (See: Wiperman Case, Ralston's *International Law and Procedure*, No. 491, p. 231.)

No lack of promptitude or courage is alleged against the British troops.

On the contrary, the evidence of eye-witnesses proves that under peculiarly difficult and trying conditions they did their duty with loyalty and daring, and upheld the highest traditions of the British Army.

Finally, it is obvious that the Missionary Society must have been aware of the difficulties and perils to which it exposes itself in its task of carrying Christianity to so remote and barbarous a people. The contempt for difficulty and peril is one of the noblest sides of their missionary zeal. Indeed, it explains why they are able to succeed in fields which mere commercial enterprise cannot be expected to enter.

For these reasons, this Tribunal is of opinion that the claim presented by the United States Government on behalf of the Home Missionary Society has no foundation in law and must be dismissed.

But if His Britannic Majesty's Government, in consideration of the service which the Home Missionary Society has rendered and is still rendering in the peaceful development of the Protectorate and the civilization of its inhabitants, and of the support its activities deserve, can avail itself of any fund from which to repair as far as possible the losses sustained in the native revolt, it would be an act of grace which this Tribunal cannot refrain from recommending warmly to the generosity of that Government.

For these reasons and subject to this recommendation, the Tribunal decides that this claim must be dismissed.

For the Tribunal:

(Signed) HENRI FROMAGEOT,
President.

IN THE MATTER OF THE TATTLER

CLAIM No. 19

Decision rendered December 18, 1920

The Government of the United States presents two claims arising out of two different detentions of the American Schooner *TATTLER* in the year 1905.

These two claims have been argued and are to be decided separately.

First Claim

This is a claim for \$2,028.88 with interest, on account of a seizure of the said schooner *Tattler* on April 10, 1905, and its detention for six days, *i.e.*, from April 10 to April 16, 1905, by the Canadian authorities in Liverpool, Nova Scotia, on a charge of an alleged contravention of the first article of the treaty concluded at London on October 10, 1818, between Great Britain and the United States, and of section 3, paragraph 3, of Chapter 94 of the Revised Statutes of Canada, 1886, entitled: "An Act respecting fishing by foreign vessels."

The record shows that by an agreement made at Liverpool, Nova Sco-

tia, April 15, 1905 (United States Memorial, Exhibit 19, enclosure 1), the owners entered into the following undertaking:

In consideration of the release of the American schooner *TATTLE* of Gloucester, Massachusetts, now under detention at the port of Liverpool, Nova Scotia (on payment of the fine of five hundred dollars, demanded by the Honourable Minister of Marine and Fisheries of Canada, or by the Collector of Customs at said port), we hereby guarantee His Majesty King Edward the Seventh, His Successors and assigns, represented in this behalf by the said Minister, and all whom it doth or may concern, against any and all claims made or to be made on account of or in respect to such detention or for deterioration or otherwise in respect to said vessel or her tackle or apparel, outfits, supplies or voyage, hereby waiving all such claims and right of libel or otherwise before any court or Tribunal in respect to said detention or to such or any of such claims or for loss or damage in the premises.

It has been observed by the United States Government that on the same day the owners notified the Canadian authorities that the payment of the said sum of \$500.00 was made under protest.

But neither this protest nor the receipt given by the Canadian authorities for the \$500.00 contains any reservation to, or protest against, the guarantee given against "any and all claims made or to be made on account of or in respect to such detention." It does not appear, therefore, that the waiver in the undertaking of any claim or right "before any court or tribunal" was subject to any condition available before this Tribunal.

It is proved by the documents that the consent of the British Government to the release of the vessel was given on two conditions: first, on payment of \$500.00, and, second, on the owners undertaking to waive any right or claim before any court, and the protest against the payment does not extend and cannot in any way be held by implication to extend to this waiver.

This protest appears to have been a precautionary measure in case the Canadian authorities should have been disposed to reduce the sum. Any protest or reserve as to the waiver of the right to damages would have been plainly inconsistent with the undertaking itself and would have rendered it nugatory if it had been accepted by the other party.

On the other hand, it has been objected that the renunciation of and guarantee against any claims are not binding upon the Government of the United States, which presents the claim.

But in this case the only right the United States Government is supporting is that of its national, and consequently, in presenting this claim before this Tribunal, it can rely on no legal ground other than those which would have been open to its national.

For These Reasons:

This Tribunal decides that the claim relating to the seizure and detention of the American schooner *Tattler* on and between April 10 and April 16, 1905, must be dismissed.

Second Claim

This is a claim for \$2,100.00, with interest, for the seizure of the same American schooner *Tattler* by the Canadian authorities on December 15, 1905, in the port of North Sydney, Cape Breton, for an alleged violation of the Canadian Statute 55 and 56 Vict. (1892), chapter 3, entitled: "An Act respecting fishing vessels of the United States."

In October, 1905, the *Tattler* registered at and sailed from Gloucester, Massachusetts, to Newfoundland on a salt herring voyage, proceeded to North Sydney, Cape Breton, and entered that port to obtain a license from the Canadian authorities under the above-mentioned Canadian Act enabling it to ship additional men as members of the crew.

It is shown by the documents and it is not denied that the Master of the *Tattler*, after entering that port, went on shore, and applied to the Canadian authorities for the said license, that notwithstanding three separate requests the license was refused him on the ground that the schooner was on the American register and did not hold an American fishing license, and that on this refusal the men were shipped without a license.

It is established by a report of the Canadian authorities to the Minister of Marine and Fisheries of Canada dated at Ottawa, December 15, 1905 (British Answer, Annex 51), that up to that season United States vessels registered as trading vessels visited Newfoundland for the purpose of obtaining cargoes of frozen herring, and were afforded all the ordinary port privileges extended to trading vessels. Newfoundland, however, in that year, *i.e.*, 1905, passed an Act preventing such vessels from procuring bait fishes, and herring, within the territorial jurisdiction of Newfoundland, and they were forced to catch their cargoes of fish for themselves, and so became fishing vessels. As they had not the necessary crews and could not, under the Newfoundland regulations, ship them in Newfoundland waters, it became necessary for them either to return home or procure the necessary crews in Canadian ports. In the early part of the season the Canadian local customs officials were not very clear as to the status of these vessels under the changed conditions. The Canadian Government, however, decided that the moment they shipped crews to catch fish they changed their character and became fishing vessels, and as such must procure a Canadian license under the Canadian Act. When the Government's decision was made known to the officials, this course was followed.

In the following month, *i.e.*, November, 1905, information was received by the owners of the *Tattler* that the Canadian authorities at North Sydney had discovered their error in regard to the license requested by and refused to the schooner, and that they were ready to issue the license on receipt of the proper fee. The owners mailed the amount without delay to the Canadian authorities at North Sydney.

By that time the *Tattler* had returned to Gloucester and sailed again for Newfoundland, and on December 15th, owing to bad weather, she entered North Sydney for shelter. She was immediately seized on the charge of having, on her previous trip, shipped men without a license. Telegraphic correspondence took place between the owners and the Canadian authorities to ascertain the facts. But it was not until three days later, *i.e.*, on December 18, 1905 (British Answer, Annex 53), that her release was obtained.

This Tribunal is of opinion that the British Government is responsible for that detention.

It is difficult to admit that a foreign ship may be seized for not having a certain document when the document has been refused to it by the very authorities who required that it should be obtained.

The British Government in their answer and argument contend that the captain of the schooner had never expressly informed the Canadian Collector of Customs that his vessel was a fishing vessel. But it is to be observed that this same ship, a few months before, sailing under exactly the same conditions and entering Canadian ports, had been treated as a fishing vessel, blacklisted and seized as one by the Canadian authorities.

That this fact could not have been and was not forgotten is shown by the aforesaid Canadian report of December 15, 1905 (British Answer, Annex 51).

In any case, it was admitted by the Canadian authorities (*ibid.*) that the officials were at that time insufficiently informed and uncertain as to the exact status of such vessels.

Such an error of judgment by the Canadian officials shall not result in prejudice to the foreign ship in question.

Under these circumstances the *Tattler* is entitled to an indemnity. *As to the quantum:*

The claim is for the alleged loss of 665 barrels of herring, valued at \$2,100.00, which, it is contended, the vessel did not catch because of the three days' detention.

But no evidence is produced as to the certainty of this prospective catch. Nobody can say whether the vessel would have made such a catch, or whether it would have encountered some mishap of the sea.

Taking into consideration the trouble undergone by the owners, the period of the detention, and the tonnage, equipment and manning of the vessel, this Tribunal thinks that the sum of six hundred and thirty dollars (\$630.00) is a just indemnity.

For These Reasons:

This Tribunal decides that the Government of His Britannic Majesty must pay to the Government of the United States the sum of six hundred

and thirty dollars (\$630) for the seizure and detention of the American schooner *Tattler* on and between December 15 and 18, 1905.

As to the interest, further decision will be given.

For the Tribunal:

(Signed) HENRY FROMAGEOT,
President.

IN THE MATTER OF THE COQUITLAM

CLAIM No. 29

Decision rendered December 18, 1920

This is a claim for \$104,709.03 and interest presented by the Government of His Britannic Majesty on behalf of the owners of the cargo of the steamer *COQUITLAM*. It arises out of the seizure of that steamer on the 22nd of June, 1892, by the United States Cutter *CORWIN* in the Behring Sea.

The following facts are admitted: The *COQUITLAM* was a British ship owned by the Union Steamship Company of British Columbia and registered at the port of Vancouver, B. C.; her gross registered tonnage was 256.33; her net tonnage 165.67.

In the spring of 1892 a number of British schooners left Victoria, B. C., for the purpose of hunting seals in the North Pacific Ocean. The owners of these vessels belonged to an association known as the Pacific Sealers Association, and at the time they sailed from Victoria it was understood that a ship would be sent out in the following June to convey supplies to the schooners and receive in return their catch of seal skins.

In pursuance of this understanding, the *Coquitlam* was chartered on June 4, 1892, for a period of thirty days and fitted out at the port of Victoria by the Pacific Sealers Association. She sailed from that port for the North Pacific Ocean on June 8.

It had been arranged that the schooners should rendezvous at Marmot Island, or Tonki Bay, in Afognak Island, or at Port Etches, in Hinchinbrook Island.

The *Coquitlam* arrived at Tonki Bay on June 18, 1892, and next day at the mouth of the bay received from eight sealing schooners 5,835 seal skins and transferred to them the supplies provided. She left Tonki Bay for the second rendezvous at Port Etches and arrived there on June 22. The same day, before any transfer had been made to or from the schooners, she was seized in the harbor by the United States Revenue Cutter *Corwin* and taken to Sitka, where she was handed over to the Collector of Customs.

No document or entry in the ship's log has been produced purporting to have been made at the time, and stating the circumstances of and reasons for the seizure.

On July 5, the United States District Attorney filed in the District Court of Alaska a libel of information against the *Coquitlam*, its appurte-

nances and cargo, alleging that she had committed three separate offenses, the first under Sections 2867 and 2868 of the Revised Statutes of the United States by receiving or unloading merchandise and cargo in the waters and within four leagues of the coast of the United States; the second, under Section 3109 of the same Revised Statutes, by transferring merchandise within the said limits without having previously reported and received a permit; the third, under Sections 2807, 2808 and 2809, by having no manifest in writing of the cargo brought into an United States harbor.

By order of the District Court of the 17th of September, 1892, the vessel, cargo and appurtenances were released upon giving bonds for \$87,660.95.

Upon the trial of the libel the *Coquitlam*, her cargo and appurtenances were condemned by a decree of the District Court, dated September 18, 1893. But on appeal, the United States Circuit Court of Appeals for the Ninth Circuit, on the 16th of November, 1896, reversed the decree of forfeiture made by the District Court and dismissed the libel.

This decision of the judicial authorities of the United States is binding upon the Government. It decides that what Sections 2867, 2868 of the Revised Statutes had in view were vessels bound to the United States and that there was no evidence that the *Coquitlam* was so bound; that Section 3109 contemplated vessels not merely arriving in the United States waters but intending to proceed further inland, either to unload or take on cargo, and that there was on the record no proof of any such intention; that the Sections 2807, 2808 and 2809 made liable to forfeiture only such merchandise as is consigned to the master, mate, officers or crew, and that it was not alleged in this case that any merchandise was so consigned.

The same decision goes on to say that there was no contention "that any injury has been done to the United States by the acts which are complained of in the libel, or that the United States has in any way been defrauded of revenue, or that there was any intention upon the part of the masters or owners of the vessels to evade the provisions of the revenue laws. The merchandise was not bound to the United States, nor was it consigned to any person, nor destined to be delivered at any place in the United States."

I. As to the liability:

It appears that shortly after the seizure of the vessel the British Government brought the matter to the attention of the United States Government, but no action was taken during the pendency of the judicial proceedings, the *Coquitlam* in the meantime having been released on bond. Subsequently in a letter of the Secretary of State to the British Ambassador dated December 21, 1904, the United States Government stated that the Department of State "is disposed to recognize liability and to recom-

mend payment of a reasonable indemnity; but it will be necessary to have submitted to it the proofs showing the nature and extent of the damages suffered by the seizure, in order that the Department may consider the amount of the liability to make a definite recommendation." There is no evidence that the British Government ever complied with the request.

Before this Tribunal the United States Government denies all liability in this case.

It contends that the construction put upon the language of the statutes by the Circuit Court of Appeals is a very technical construction, while the construction upon which the officer acted in making the seizure had abundant support in decisions of the United States courts prior to this case, that it is clear, when this circumstance is taken in conjunction with the facts as disclosed, that the officer acted in the bona fide belief that the revenue laws of the United States had been infringed, and that for this belief there was probable cause.

The good faith and fair conduct of the officers of the *Corwin* are unquestionable, but though this may be taken into account as an explanation given by the same officers to their Government, it cannot operate to prevent their action being an error in judgment for which the Government of the United States is liable to a foreign Government.

Further, even supposing that the interpretation of the United States customs statutes may have given rise to some doubt, such a doubt cannot constitute a probable cause of seizure. Probable cause of seizure, as defined by Chief Justice Marshall, "imports a seizure made under circumstances which warrant suspicion" (*Locke v. United States*, 1813, VII Cranch 339, at p. 348). It implies the existence of certain facts which prima facie create a liability to seizure, facts which there is good reason to believe will be established though they are not yet actually proved. The doubt must be as to the existence of the fact, not as to its wrongful character.

Since in this case there was no doubt as to the circumstances of fact under which the seizure took place, but, according to the United States contention, some possible doubt as to the application of the statutes, their application was made by the United States naval authorities at the risk of their Government, and since it has been decided by the United States judicial authorities that this application was wrong, liability clearly arises.

II. *As to the consequences of the liability and amount of damages:*

The result of inquiry made by the Tribunal of the agents of both Governments has been to show that a sum of \$48,000 represents a proper amount to be paid by the Government of the United States as compensation for the seizure and its consequences.

III. *As to interest:*

It would not be equitable that interest should be allowed for the period prior to six months after the decision of the Circuit Court of Appeals on

November 16, 1896, *i.e.*, prior to May 16, 1897. On the other hand, it has been shown that, on December 21, 1904, the United States Government declared that it was disposed to recommend payment on condition that the British Government should submit proof of the nature and extent of the damages. As has been said, there is no evidence that the British Government ever complied with that request.

Taking these circumstances into consideration, this Tribunal is of opinion that interest at 4% should be allowed from May 16, 1897, to December 21, 1904.

For These Reasons:

This Tribunal decides that the Government of the United States must pay to the Government of His Britannic Majesty the sum of \$48,000 on behalf of the British subjects injured by the seizure of the *S. S. Coquitlam* in June, 1892, with interest at 4% from May 16, 1897, to December 21, 1904.

For the Tribunal:

(Signed) HENRY FROMAGEOT,
President.

BOOK REVIEWS *

La Chine et la Grande Guerre Européenne. By Dr. Nagao Ariga, with a preface by M. Paul Fauchille. Paris: A. Pedone, 1920. pp. 342.

This small but highly valuable and interesting volume is written for a very definite purpose: that of proving to the world at large that China stands, once for all, back of accepted principles of international law, in the capacity of a world Power which has much of value to offer in the matter of interpreting and applying these principles,—this as the result of five years' experience of difficulties which had to be met, and had to be overcome merely because China is China. Many were the varied and perplexing problems confronting the nation during the war period; and, whether judged by the standard of the theorist or by those of the practical diplomat, the Chinese officials proved themselves not only students (in the highest sense of the term) of the principles of international relationship, but teachers and authoritative exponents thereof. In the words of the author: "In the future it must no longer be the foreigner who forces her to recognize and observe the principles of the law of nations; it must be China herself who must be inspired by the desire to govern her conduct by these principles. . . . The Republic proved to a demonstration that she was both able and willing to abide by the rules of international law."

The author has enjoyed exceptional opportunities for observing at first hand, and hence fully appreciating from every standpoint, the exact situation of China during the war, having occupied the position of legal adviser to the Republic for the seven and one-half years preceding the publication of the work. But aside from the above, he has had access to archives and documents which clothe his book with a peculiar authority, many of which are presented by him to the public in its pages for the first time. He has also drawn on the White Book issued by the Chinese Government in 1919, a publication modeled on the British Blue Books. This work contains, he tells us, 191 separate episodes set out in chronological order, the most important of which he has reproduced, with comments. But over and above these sources, thanks to the permission of the Chinese Government, the author has been permitted, during the preparation of this book, to examine, and use as texts, documents preserved in the Cabinet Files, and in the files of the Bureau of Affairs dealing with Neutrality, established by that government during those troublous times.

*The JOURNAL assumes no responsibility for the views expressed in signed book reviews.—Ed.

As to the book itself: it is, one might say, in a sense a diminutive case book of international law, limited to the classification and, to a certain extent, the analysis of a generous number of episodes involving problems which the Chinese Government was called upon to solve, first as a neutral Power, next as a nation which has broken off friendly relations with a sister nation, and finally in the capacity of a state at war. The situation which, in general, confronts any member of the family of nations during these changing phases of polity and fact is briefly commented upon by the writer, who then follows up his remarks by a careful presentation of what we may describe as the local political landscape of China at the time, and the methods pursued by her in adapting her own peculiar conditions to an observance of the legal principles involved. In so doing the writer adopts the method, excellent as it is simple, of presenting the facts attendant on each case as it came up, in many cases the exchanges of the representatives of the nations interested, and the final action taken. These incidents are, naturally, related in condensed form, but not to an extent to interfere with the lucidity of presentation which characterizes the entire work. It is the ordered and useful product of an ordered and comprehensive mind.

C. L. BOUVÉ.

The British Year Book of International Law, 1920-21. London: Oxford University Press. 1920, pp. viii, 292.

This first volume of the British Year Book of International Law appears under the auspices of a committee composed of Sir Erle Richards, Professor Higgins, Sir John MacDonnell, Sir Cecil Hurst, and Mr. Whit-tuck, with Mr. Picciotto as the editor. This list of distinguished scholars is of itself an invitation to serious consideration. The series of essays, so appetizingly printed, well justifies the attention which its sponsors invite. Their purpose is to provide an annual volume wherein may be found "well-informed and careful contributions to the science of international law," the fruits of research as applied to the problems of today. In this initial work are ten essays as follows: The British Prize Courts and the War, by Sir Erle Richards; Sovereignty and the League of Nations, by Sir Geoffrey Butler; The Legal Position of Merchantmen in Foreign Ports and National Waters, by A. N. Charteris, Esq.; The Legal Administration of Palestine under the British Military Occupation, by Lt. Col. Norman Bentwich; Submarine Warfare, by Professor Higgins; The Peace Treaty in its Effects on Private Property, by E. J. Schuster, Esq.; and International Labor Conventions, by Sir John MacDonnell; together with three anonymous contributions upon Changes in the Organization of the Foreign and Diplomatic Service, the League of Nations and the Laws of War, and the Neutrality of Brazil. In addition there are

appreciative memorial notices of Professors Oppenheim and Lawrence, of Heinrich Lammasch, and Dr. Pitt Cobbett. Lastly there have been included a tentative list of international agreements, 1919-20, and a fairly complete bibliography of recent literature in the general field.

With the limits of this notice it is impossible to give to each essay the attention it deserves. In discussing the work of British prize courts, Sir Erle Richards, faced by the question of the legality of retaliation as presented by the case of the *Leonora*, concludes that though the law must be reluctant to admit that illegality may be answered by illegality at the expense of third parties, yet in practice it is impossible to deny that some right of retaliation exists. Even if this "right" exists as against the enemy (about which there can be little doubt), there does not seem as yet to be a basis for it as against neutrals, except the very practical one of preponderant belligerent power over neutral complaisance or weakness. The right is only likely to be claimed in exceptional circumstances, "only in super-wars such as the last, in which neutral influence ceases to be a real power." Or to put it in another way, if the preponderance of sea-power is neutral, there is likely to be no attempt to make use of retaliatory methods. If sea-power is preponderantly belligerent, there may be. This is all doubtless true, but it is the denial rather than the affirmation of a legal principle. That way madness lies.

Discussing merchantmen in national waters, Mr. Charteris examines the conflicting British and French systems and argues for an international agreement upon the extent and nature of jurisdiction over foreign merchant vessels based upon the resolutions of the Institute of International Law, but giving definite content to the phrase "crimes and offenses disturbing the peace of the port."

Mr. Schuster considers, without attempting to decide, the question as to whether the treatment of personal property after the conclusion of peace as provided for in the treaty of peace with Germany has set a precedent to be followed in the future. On the one hand, the risk of confiscation may impede desirable freedom of commerce; on the other hand a risk might have some deterrent effect "upon a number of powerful and influential persons who might otherwise be favourable to ambitious military projects." There is thus raised the kind of query always to be met with in reference to the instrumentalities of warfare, on the one hand the affront to sensibility, upon the other the deterrent effect of severity.

The aim of the editors that the volume contain worthy contributions to the science of international law has been accomplished, and it is to be hoped that the continuance of the series may be assisted by the support given it by American readers.

J. S. REEVES.

La Intervención de España en la Independencia de Los Estados Unidos.

By Manuel Conrotte. Madrid: Libreria general de Victoriano Suarez. 1920. pp. 298, 6 pesetas.

The growing interest recently shown by historical schools of the United States in the relation of Spain to the Revolutionary War in this country has its counterpart in this book from the pen of a Spanish historian. That the influence of Spain on the struggle was less than that of many other countries is admitted by the author. While in cities of the United States many monuments are found erected to the honor of foreigners who participated in that struggle, he points to the fact that there are none to Spaniards and implies that perhaps none are deserved. The influence which Spain's participation exerted on the war for the independence of the United States is of less interest than the influence which Spanish participation in that struggle had on Spanish sovereignty over her own American dominions. The author's introduction speaks of the pernicious example placed before the Spanish colonies by the assistance which Charles III gave to the rebellious English colonies, a matter usually emphasized by writers in this field.

The author's chief source of information, he says, was the diplomatic correspondence contained in the National Historical Archives at Madrid. Although his footnotes and citations are not especially numerous, they are sufficient to support the claim that the material is drawn chiefly from valuable primary sources. There are some, though few, citations of secondary sources. The book is not merely a worthy contribution to the history of the Revolutionary War, but it also contributes useful material for a history of that conflict and at the same time constitutes a suggestive guide or index to the rich repository of material for the history of the United States contained in the archives of Spain.

The most frequent references are to the correspondence of Floridablanca, the Spanish Foreign Minister; Aranda, Spanish representative at Paris; Vergennes, French Foreign Minister; Montmorin, French representative at Madrid; Masserano, Escarano, Almodovar and Campo, successive Spanish representatives at London; Franklin and Lee, representatives of the revolted English colonies; Bernardo Galvez, Spanish Governor of Louisiana, and José de Galvez, Spanish Colonial Minister.

An appendix of seventy-five pages contains the complete text of many documents, among them the full power of Franklin to negotiate a treaty with Spain, the treaty between France and Spain of April 12, 1779, by virtue of which the latter entered the war against England; articles of capitulation presented by Galvez, Spanish Governor of Louisiana, to Durnford, English Governor of West Florida and commander of British troops, and articles of capitulation presented by the same Spanish Governor to the British commander at Pensacola.

The writer in his first chapter draws an interesting contrast between the impression which the insurrection in America produced on the public opinion of France and Spain, respectively. The influence of the Encyclopedists and the doctrines of Rousseau caused the French to applaud the colonists who had rebelled against tyranny, to compare them with the heroes of classical antiquity, and to celebrate their exploits in poetry, theatricals, and novels. In Spain, on the contrary, the conclusions of theology and philosophy were such that the crime of disobedience on the part of a subject toward his sovereign could not be tolerated.

Speaking of the defective linguistic equipment of the Colonial Commissioners, the writer says that Franklin spoke very bad French, Deane worse, and Lee was absolutely ignorant of the language, characteristic faults which their diplomatic successors have not yet entirely overcome.

Spain's position in international affairs after 1763; her attempt to preserve a conditional neutrality and intervene to restore peace between England and the colonies; her military objectives; her negotiations with the colonies; her share in the peace negotiations, and the outstanding difficulties in her relations with the new nation over the questions of boundaries and navigation of the Mississippi River, constitute the chief topics of the successive chapters.

As is usual, though regrettable, in Spanish books of this character, there is no alphabetical index, but merely a topical list of contents. In this there are not even page citations, except at the beginning of chapters.

WM. R. MANNING.

The Equality of States in International Law. Harvard Studies in Jurisprudence, Volume III. By Edwin DeWitt Dickinson, Ph.D., J.D. Cambridge: Harvard University Press. 1920. pp. xiii, 424.

The idea of equality is instinctive. Its vehement assertion is an imperious necessity. One could never assert the right of inequality except in defense of slavery.

The principal of equality among nations has been vigorously reaffirmed in recent years. The American Institute of International Law on January 6, 1916, declared:

Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

The *Union Juridique Internationale*, in its session of November 11, 1919, in Paris, also declared in more guarded terms that:

Les États sont égaux devant le Droit.

L'égalité de droit implique une égale coopération à la réglementation des intérêts

de la communauté internationale, sans conférer nécessairement une égale participation à la constitution et au fonctionnement des organes préposés à la gestion de ces intérêts.

Ils sont limités dans leur droit par leur obligation de respecter le droit des autres Etats.

This qualified interpretation of the principle of equality is characteristic of the attitude of the publicists of repute on international law. Few venture to assert as an inherent, inalienable, absolute right, without qualification, the claim to equality among nations. Nearly all recognize their glaring political inequalities. To some publicists equality is a logical corollary to the right of existence as a separate, independent, sovereign state. To many it signifies equality "in and before the law"—whatever that may mean. To others it is the assertion of a mere rule of international courtesy—the outward respect due to an international personality. To most of the publicists the principle of equality, in final analysis, would seem to signify a platonic ideal—a distant goal of perfection toward which nations are laboriously moving.

The confusion of thought on this subject is painfully apparent, as is also the frank denial of equality in the actual intercourse of nations. Witness the proceedings of the recent Peace Conference in Paris and the Covenant of the League of Nations!

Dr. Dickinson has undertaken in a most judicial and scholarly manner to dissipate this confusion of thought concerning a fundamental problem, not merely of the law of nations, but of the very nature of international society and of international organization. His main conclusions are as follows (p. 334):

1. "The principle of state equality in international law was a creation of the publicists."

2. "It was derived from the application to nations of the theories of natural law, the state of nature, and natural equality."

3. "The conception of state equality was first developed as part of a coherent theory by the naturalists of the seventeenth and eighteenth centuries. Grotius neither discussed the conception nor based his system upon it." Pufendorf, under the inspiration of Hobbes, was largely responsible. The later publicists rather blindly followed in his lead, though reënforcing the argument for equality by arguments based on the rights of existence, independence and sovereignty.

4. "The principle of equality . . . in the modern law of nations is the expression of two important legal principles. The first of these may be called the equal protection of the law or equality before the law. States are equal before the law when they are equally protected in the enjoyment of their rights and equally compelled to fulfil their obligations. . . . The second principle is usually described as equality of rights and obligations or more often as equality of rights. . . . What is really meant is an equality of capacity for rights. Equality in this sense is the negation of

status. . . . Equality of capacity for rights . . . is not essential to the reign of law. Strictly speaking, it has never been anything more than an ideal in any system of law."

5. "Conceding that equality of capacity for rights is sound as a legal principle, its proper application is limited to rules of conduct and to the acquiring of rights and the assuming of obligations under those rules. It is inapplicable from its very nature to rules of organization. Insistence upon complete political equality in the constitution and functioning of an international union, tribunal, or concert is simply another way of denying the possibility of effective international organization."

These conclusions, it will be observed, definitely accept inequality of status among nations, though affirming their potentially equal capacity for rights. Dr. Dickinson holds (p. 335) that: "Equality before the law is not inconsistent with the grouping of states into classes and the attributing to the members of each class of a status which is the measure of a capacity for rights. Neither is it inconsistent with inequalities of representation, voting power, and contribution in international organizations." In other words, though all nations have an equal capacity for rights, it is the privilege of certain superior nations to determine for the rest their exact status "which is the measure of capacity for rights!" The question would seem highly debatable, and Dr. Dickinson himself says that in the discussion of the status of small nations in the constitution of an international court of justice: "This distinction between having a political right and being able to use it was effectively refuted by Barbosa. The Brazilian delegate denounced the distinction as *manifestement sophistique*." It would appear logical that if equal capacity for rights does not include the right to participate equally both in the organization of an international court of justice and in the formulation of the law to be applied by this court, such nation cannot be said to possess *real* "equality before the law." An inferior status determined by other nations renders justice arbitrary when accorded by these same nations. Such a conception of equality would appear *manifestement sophistique*.

Nothing can be said in criticism of Dr. Dickinson's method of analysis. His exposition of the relation of the law of nature to the law of nations is unexcelled in thoroughness, precision, and penetration. His chapters on "Internal and External Limitations upon the Equality of States" are most original and illuminating in setting forth the exact nature of international society as well as showing the various ways in which a nation may acquire an unequal status. His chapter on "The Equality of States in the Peace of Paris" is a most acute analysis of the work of the Conference and furnishes striking though melancholy confirmation of his own evaluation of the working significance of the principle of equality.

Dr. Dickinson has succeeded most admirably by the use of what he terms in the preface (p. viii) "a realistic outlook and the application to

the subject-matter of established principles of legal analysis" in avoiding "the pitfalls of 'loose writing and nebulous speculation.'" His book is a splendid contribution to the constructive thinking required to regenerate the law of nations and to establish it as a sound system on the basis of realities.

This book should be in the hands of all students of the science. It should be read with particular care and interest by all advocates of international organization who desire first of all to understand the exact nature of international society before undertaking the difficult task of its higher organization.

PHILIP MARSHALL BROWN.

The Senate and Treaties, 1789-1817. By Ralston Hayden. New York: The Macmillan Co. 1920. pp. xvi, 237.

This monograph, published by authority of the Executive Board of the Graduate School of the University of Michigan, is designed to cover the period from 1789 to 1817, as regards the development of the treaty-making powers of the Senate. The author has confined himself strictly to this period, and is to be commended for his diligence. The work is primarily a study in history and politics. The treatment is in chronological order, rather than by topics. Any objection to this arrangement, for purpose of reference, is overcome by a carefully prepared index. The nine chapter headings are as follows: "The First Exercise of the Treaty-Making Power"; "Development of Treaty-Making Power through Action on Treaties with Indian Tribes, 1789-1795"; "The Treaties with Algiers and Spain, 1790-1796"; "The Jay Treaty"; "The Creek Treaty of 1796"; "Treaties of the Administration of John Adams"; "The Senate and the Treaties of Thomas Jefferson"; "The Genesis of the Senate Committee on Foreign Relations," and "The Treaty-Making Powers of the Senate at the End of the Formative Period, 1815-1817." The citations show that the author has examined fully the published writings of the leaders of the period to discover the motive for official action. Withal, it is a very valuable and interesting study.

S. B. C.

The New World Order: International Organization, International Law, International Coöperation. By Frederick Charles Hicks. New York: Doubleday, Page & Co. 1920. pp. viii, 496.

Here we have a book packed with facts and written by one versed as a briefer. The author is the law librarian of Columbia University, but he has done more than to "turn over half a library to make one book"; he

has organized his informing data, until, with apologies to Hegel, his "creative synthesis" has given us something better than existed before.

There are 290 pages of text and 190 pages of appendices. The text is divided into three main divisions dealing respectively with: (1) International Relations, (2) International Law, (3) International Coöperation. The appendices give us the most relevant parts of the peace treaty; the treaty establishing the Dual Alliance in 1879; the published sections of the treaty establishing the Alliance, renewed finally in 1912; the French texts of the two papers relating to the Russo-French alliance; the Holy Alliance act; Central American treaties of 1907; the Convention for the Pacific Settlement of International Disputes; the draft convention relative to the creation of the Judicial Arbitration Court, and the convention relative to the creation of an International Prize Court, all taken from the Hague Conventions and drafts of 1907; the treaty between the United States and Guatemala, 1913, and a bibliography. There is a respectable index.

Hence we have here an ambitious work; but a dip into its substance does not disappoint. It contains excellence. History in abundance falls before the author's power of analysis. Thus a service is rendered to the inquiring mind bent on knowing something of the Covenant of the League of Nations.

The early portions of the first chapter will bring prepossessions of many to the author's support at the outset. Like the men who gathered at The Hague in 1899 and in 1907, he recognizes in his beginning paragraphs "the solidarity uniting the members of the society of civilized nations." But a careful reading of the entire chapter reveals more caution than seems necessary. It may be true, as he says, that the society of civilized nations has no written covenant, no officers, no seat of government or administration; but the Hague Conferences with their statutes, their Court of Arbitration and other organs, came nearer to being these things than the author seems to grant or realize. Instead of saying dogmatically that no world legislature "at any time has been in existence," he might have acknowledged more appropriately the quasi-legislative acts, say, of those same Hague Conferences. Indeed, he does grant in another connection (page 107): "In any case the work of the two Hague Conferences and of the International Naval Conference ought not to be lost. In the light of a new and unparalleled experience, their product should be revised, if only to attempt anew to record the progress of custom and the common consent on which all international law is founded."

Many people will probably agree that the present League of Nations is "a new manifestation of the desire to give more definite organization to the existing Society of Nations upon which it is based and out of which it has grown." But all will not agree with "the author's personal conviction that the League of Nations should be supported not merely because

it provides means for putting war a few steps farther in the background, but because it emphasizes the necessity for coöperation between sovereign states." This "personal conviction," however, is expressed only in the preface. In justice to the author, it must be granted that in the body of his text "the facts have been allowed to speak for themselves, opinions and prophecies rarely being hazarded."

The book is typical of the fact that a movement for some form of a governed world seems now to be substantially in that period of its development which science, particularly biological science, found itself following the work of the Swedish botanist, Carl von Linné, at about the time of the American Revolution. With Linné, collection and classification were a methodic passion. Because of his influence, in no small measure, the museums of Europe became choked with specimens. The naïve notion prevailed that by the collection of a sufficient number of specimens clearly classified, ultimate truth could be adequately attained. Dr. Hicks gives us something of an impression of a Linnaeus bent upon attaining unto ultimate international truth by the method of collecting and briefing as many facts as possible relative to the League of Nations. This seems just now to be peculiar to most of the books treating of that hotly debated subject.

Yet the weaknesses of the book are but incidental to its elements of strength. It is evidently the product of a careful and conscientious note taker, assisted by his students, and bent upon using his notes for lecture purposes. Failure to employ a sufficient number of connectives, relatives, and periods leaves some of the passages correspondingly nebulous. In a book thus constructed, even the schoolmaster's "baby blunder" is probably inevitable; in any event, on page 14 there stands unabashed the unlawfully wedded sentences: "In 1919 the attempted answer was the League of Nations, but let us not imagine that this is a new conception produced by the latest necessity for something better than had yet been devised." It is difficult to defend the inclusion of the long quotation from President Lowell, pages 64 and 65, distinguishing futilely between an automatic and a delegated form of a league of nations. There are still more glaring errors. In his *Economies Royales*, Pfister seems to have disposed in 1894 of the theory that Henry IV was the author in fact of the "Great Design" rather than Sully, his Minister of Finance. It is very doubtful if this, as our author says, is "a doubtful question." On page 74 the author seems to have made two misstatements of fact within the compass of one sentence. Referring to William Ladd's plan for a separate court of international justice, the author says: "He had been preceded in this conception by Bentham in 1789, but as Bentham's plan was not published until 1843, Ladd could not have been indebted to him for the idea." Since Bentham's "common court of judicature" was essentially a diplomatic body usually referred to by its author as a "Congress or Diet," it cannot

be said with accuracy that Mr. Ladd's Court had any relation to the conception by Bentham. Furthermore, for the sake of historical precision, Bentham's plan was first published in 1839; not in 1843. On page 114 the author says: "It may well be contended historically that the primary purpose of the Monroe Doctrine was not to maintain peace," etc. And yet the Monroe Doctrine specifically says, speaking of European countries, "that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety." It would seem nearer to the truth to say that it may be well contended historically that the primary purpose, like the primary result, of the Monroe Doctrine was and is to maintain peace. It is difficult to picture Alexander VI issuing a Papal bull recognizing the paramount interests of Spain "in the Gulf of Mexico" as early as 1493. It is inaccurate for the author to say, as he does on page 291, that the Interparliamentary Union has "now 3,300 members drawn from the twenty-four Groups." But errors like unto these, and there are others, do not detract from the value of the book so materially as one would naturally conclude before reading it.

The author achieves his general purpose of examining the Covenant of the League of Nations at first hand. He wisely tries to abstain from defending a thesis. In no way does he criticize directly or indirectly the reservations of the Covenant of the League of Nations as proposed by the United States Senate. Thus, layman or expert, be he for or against the League of Nations, will be glad to possess this informing text both for purposes of general reading and ready reference.

There are twenty chapters in the text. Chapters I-VI deal with international organization. These chapters are not coherently arranged, but they are valuable just the same, for they do summarize previous league proposals, lay before us facts relative to the balance of power and the concert of Europe, and sketch the beginnings and the salient features of the League Covenant. Chapters VII-XIII deal with international law under such headings as customary international law and treaty-made law, the development of international law, international law and peace, international arbitration and the administration of territory. Chapters XIV-XX treat of international coöperation. Here there are chapters devoted to international coöperation during the war, diplomacy as a means of international coöperation, coöperation in national legislation, and international coöperation through public and private associations. Chapter XVII, dealing with the subject of conflict of laws, that is to say, coöperation in national legislation as it relates particularly to extradition, nationality, naturalization, expatriation, and labor, is one of the most thoughtful and helpful, if not the most helpful, of all the chapters; but this is an expression of personal opinion with which many others would undoubtedly differ.

Emerson defines a good book as the book which puts us "in a working mood." Measured by that standard, we have here a good book. Every thoughtful reader of its pages will agree to that.

ARTHUR DEERIN CALL.

The Peace Negotiations: a Personal Narrative. By Robert Lansing. With illustrations. Boston and New York: Houghton Mifflin Company. 1921, pp. 328. \$3.00.

For the readers of this JOURNAL the chief interest in this book will be in the contrast presented in this personal narrative between what the peace negotiations really were and what they might have been. Coming from the former Secretary of State of the United States, the history of the procedure followed possesses a higher degree of authority than can be claimed for the reports given by previous writers on this subject, while his emphatic dissent from the course pursued in nearly all points confirms the justice of the chief criticisms passed by others upon the work of the Peace Conference, and particularly upon the Covenant of the League of Nations as an international compact.

From the moment when President Wilson decided that he would go to Paris and personally conduct the peace negotiations there, according to Secretary Lansing's account, the President and he were at variance at virtually every step of the proceedings. Believing, as he asserts, "that the Constitution of the United States confides to the President the absolute right of conducting the foreign relations of the Republic, and that it is the duty of a Commissioner to follow the President's instructions in the negotiation of a treaty," Secretary Lansing evidently thought that this divergence of views did not constitute a sufficient reason for separating from his chief. President Wilson, however, pressed this theory of the President's prerogative in the conduct of the nation's foreign relations to its logical conclusion. "While we were in Paris," he wrote to the Secretary, on February 11, 1920, "I felt and have felt increasingly ever since, that you accepted my guidance and direction on questions with regard to which I had to instruct you only with increasing reluctance."

If it be true, as Secretary Lansing holds, that the President of the United States is intrusted with the "absolute right" of determining international policy, and it is the duty of a Commissioner to follow the President's instructions—and this is the only point in which the President and the Secretary appear to have been in perfect harmony—the President was undoubtedly right in feeling that his guidance and direction should be accepted without reluctance; for in this matter his will was the law.

It is not necessary here to enter into the question whether or not the conduct of the foreign relations of the United States is legally intrusted

to a single mind; but, if it be so intrusted, the chief permanent value of Secretary Lansing's personal narrative may prove to be a demonstration of the unhappy consequences of this theory. It shows beyond the possibility of contradiction that the exclusive exercise of such an "absolute right" in a form of government designed to render impossible any form of absolutism involves risks of error of incalculable gravity.

The utility of a wider responsibility in decisions of such public importance is well set forth in the author's conception of the duties of a diplomatic representative commissioned by the President and given full powers to negotiate a treaty. These duties are, "in addition to the formal carrying out of his instructions, twofold, namely, to advise the President during the negotiations of his views as to the wise course to be adopted, and to prevent the President, in so far as possible, from taking any step in the proceedings which may impair the rights of his country or may be injurious to its interests. These duties," he concludes, "in my opinion, are equally imperative whether the President directs the negotiations through written instructions issuing from the White House or conducts them in person." These obligations he regards as "the more compelling" in the case of the Secretary of State.

How vain and nugatory these obligations become if they encounter the resistance of a mind convinced of its "absolute right," the pages of this book disclose.

Placed in this anomalous position of considering it his duty to give advice with the growing conviction that his advice was not wanted and would not even be seriously considered, the Secretary of State reports his line of conduct as follows:

Though from the first I felt that my suggestions were received with coldness and my criticisms with disfavor, because they did not conform to the President's wishes and intentions, I persevered in my efforts to induce him to abandon in some cases or to modify in others a course which would in my judgment be a violation of principle or a mistake in policy. It seemed to me that duty demanded this, and that, whatever the consequences might be, I ought not to give tacit assent to that which I believed wrong or even injudicious.

This duty, according to the author's narrative, was faithfully performed; and it was the performance of this duty that is presented as the prime cause of the virtual detachment of the Secretary from the course of the negotiations and of the ultimate decision of the President, declared under circumstances that were not very obviously related to it and for an immediate reason that seemed even less sufficient, to request an opportunity to select some one "whose mind would more willingly go along" with his.

With what good faith the Secretary entertained convictions upon points of procedure and policy in opposition to the plans and purposes of the President is clearly evidenced by the memoranda made from day to day

as this opposition developed, sometimes prepared for submission to his chief and directly addressed to him, and sometimes kept as a registration of his private opinions regarding proposals and events.

The principal subjects concerning which the Secretary disagreed with the President he enumerates as follows:

His presence in Paris during the peace negotiations and especially his presence there as a delegate to the Peace Conference; the fundamental principles of the constitution and functions of a League of Nations as proposed or advocated by him; the form of the organic act, known as the "Covenant," its elaborate character and its inclusion in the treaty restoring a state of peace; the treaty of defensive alliance with France; the necessity for a definite programme which the American Commissioners could follow in carrying on the negotiations; the employment of private interviews and confidential agreements in reaching settlements, a practice which gave color to the charge of "secret diplomacy"; and, lastly, the admission of the Japanese claims to possession of German treaty rights at Kiao-Chau and in the Province of Shantung.

Of these seven subjects of difference the most important were those relating to the League of Nations and the Covenant, though our opposite views as to Shantung were more generally known and more frequently the subject of public comment.

Of the President's main purpose, Mr. Lansing writes: "Unquestionably the American people as a whole supported him in the belief that there ought to be some international agreement, association, or concord which would lessen the possibility of future wars"; and he adds: "I am convinced that the same popular belief prevailed in all other civilized countries." The opportunity was extraordinary.

The divergence of views between the President and the Secretary of State was, therefore, confined to basic principles and methods of procedure, but on the seven points mentioned by him it was diametrical.

The Secretary believed that if the President remained in Washington he would retain his superior place and could procure a just peace; but, if he attended the Peace Conference, he would have to submit to the combined will of his foreign colleagues and would become a prey to intrigue. After the President had departed he wrote: "I am convinced that he is making one of the greatest mistakes of his career and will imperil his reputation. . . . I believe the President's place is here in America."

It soon became apparent that Mr. Wilson's dominant idea was a league of peace based upon the superiority of armed force in support of a military guarantee of territorial integrity and political independence. As early as May, 1916, seeing this purpose already forming in the President's mind, the Secretary had said to him in writing: "In any representative international body clothed with authority to require of the nations to employ their armies and navies to coerce one of their number, we would be in a minority"; and he declared that neither our sovereignty nor our interests would accord with such a proposition, while popular opinion as well as the Senate would reject a treaty framed along such lines.

What Mr. Lansing desired and proposed was a judicial rather than

a politico-diplomatic body, but the President had in mind merely political guarantees; for, as the Secretary says, Mr. Wilson had little faith in judicial procedure, and in his own personal and official decisions "conformed grudgingly and with manifest displeasure to legal limitations," being "especially resentful toward any one who volunteered criticism based on a legal provision, precept, or precedent." "The legal principle of the equality of nations," Mr. Lansing wrote to him in November, 1918, "whatever its basis in fact, must be preserved, otherwise force rather than law, the power to act rather than the right to act, becomes the fundamental principle of organization." In President Wilson's scheme of a political union to give effect to guarantees, the Secretary believed he saw "as an unavoidable consequence an exaltation of force and an overlordship of the strong nations" that would destroy the principle of juridical equality, which is the first postulate of international law.

On December 20, 1918, in a letter addressed to the President, Mr. Lansing enclosed a memorandum calling attention to the limitations imposed by the Constitution of the United States upon the executive and legislative branches of the Government in defining their respective powers, in which he expresses his belief that the right to declare war, conferred by the Constitution upon Congress, cannot be delegated by treaty; to which he adds, that "to contract by treaty to create a state of war upon certain contingencies arising would be equally tainted with unconstitutionality and would be null and inoperative."

Holding that legal justice offers a common ground where nations can meet and settle their controversies, the Secretary proposed a plan of his own for an international organization founded upon this juridical conception. But this proposal, like all the other suggestions of the Secretary, received no sign of consideration, and he was at no time brought into consultation regarding the formulation of the Covenant of the League.

In Washington the President had never taken the Secretary into his confidence regarding his own plan for a League of Nations. "The only opportunity that I had," writes the Secretary, "to learn more of a League before arriving in Paris was an hour's interview with him on the *U. S. S. George Washington* some days after we sailed from New York." Even then nothing in writing was shown to him although the President had prepared a written plan, but from the oral explanation he gathered that diplomatic adjustment rather than judicial settlement was the basic idea, and "that political expediency tinctured with morality was to be the standard of determination of international controversy rather than strict legal justice." Even for arbitration there was no conclusive arrangement.

Of the President's plan, a copy of which the Secretary received for the first time from Colonel House at Paris after it had been given to the printer, Mr. Lansing says, "The more I studied the document, the less I liked it." He found it not only badly drawn, but that it established the

primacy of the Great Powers, was out of harmony with American ideals, policies, and traditions, particularly in the lack of any provision for the establishment of a permanent international judiciary and by the introduction of the mandatory system.

This system had its origin in the proposal of General Smuts, that the League of Nations should become "the heir of the Empires," which in Mr. Wilson's mind took the form of making the League the "successor" and "residual trustee" of "peoples and territories"; a conception which Mr. Lansing describes as "a novelty in international relations sufficient to arouse conjecture as to its meaning; but giving to the League the character of an independent state with the capacity of possessing sovereignty and the power to exercise sovereign rights through a designated agent was even more extraordinary."

Of Lord Robert Cecil's plan, the text of which is presented in the Appendix to this volume, Mr. Lansing says that it was a "Quintuple Alliance based on the power to compel obedience, and the right of the powerful to rule"; and was "intended to place in the hands of the Five Powers the control of international relations and the direction in large measure of the foreign policies of all nations. . . . It seemed to provide for a rebirth of the Congress of Vienna which should be clothed in the modern garb of democracy." Notwithstanding the identity in principle of the Wilson and the Cecil plans, the latter did not meet with the President's approval because it omitted the mutual guarantee upon which he insisted and which was finally adopted as "the heart of the Covenant."

In separate chapters Mr. Lansing expresses his views on "Self-determination," which he considers "menacing to peace and impossible of application"; "A Resolution instead of a Covenant," which he thought sufficient, in the treaty of peace; "The Guarantee in the Revised Covenant," which he condemns; "International Arbitration," in which he speaks of "the contempt which Mr. Wilson felt for The Hague Tribunal"; "The Report on the Commission of the League," concerning which the President had no conferences with the American Commissioners, except Colonel House; "The System of Mandates," in which he raises the important question, Where does the sovereignty over the territories under a mandate reside? and demonstrates the legal vacuity of the whole conception; "The Proposed Treaty with France," which he did not support; "The Lack of an American Programme," which left the American Commissioners "without a chart of the course they were to pursue in the negotiations and apparently without a pilot who knew the channel"; "Secret Diplomacy," which the President considered "was the normal and most satisfactory method of doing business"; "The Shantung Settlement," upon which the writer throws a strong light, citing the President's explanation to the Chinese delegation that he had been compelled to accede to Japan's demand "in order to save the League of Nations."

Mr. Lansing now has the satisfaction of knowing that his views on virtually all of these points have been sustained by those whose knowledge enabled them promptly to form an independent judgment regarding President Wilson's policies, and ultimately by the predominating decision of the American people. In his exposition of his dissent from those policies his narrative proceeds clearly, firmly, and convincingly. It is only when he wanders into the subjective domain of motives and hypothetical states of mind that his discussion becomes in a certain degree vague and inconclusive. Despite the relentless exposure of personal differences of judgment,—and here nothing is concealed or extenuated,—there is a total absence of malice or bitterness in this narrative. In the realm of motives, which he does not hesitate to explore somewhat minutely, there is an obvious desire to be charitable toward the President. "There never had been," he writes, "a personal intimacy between the President and myself, such as existed in the case of Colonel House and a few others of his advisers, and as our intercourse had always been more or less formal in character, it was easier to continue the official relations that had previously prevailed. I presume that Mr. Wilson felt, as I did, that it would create an embarrassing situation in the negotiations if there was an open rupture between us or if my commission were withdrawn or surrendered and I returned to the United States before the Treaty of Peace was signed." The President, Mr. Lansing thinks, feared that a rupture would jeopardize the acceptance of the Covenant by the Senate, while he himself was convinced that his withdrawal would "seriously delay the restoration of peace, possibly the signature of the Treaty at Paris, and certainly its ratification at Washington." Believing that no change could be made in Mr. Wilson's views on any fundamental principle, and that it was "a duty to place no obstacle in the way of the signature and ratification of the Treaty of Peace with Germany," Mr. Lansing declares, "I felt that there was no course for me as a representative of the United States other than to obey the President's orders however strong my personal inclination might be to refuse to follow a line of action which seemed to me wrong in principle and unwise in policy."

Highly honorable as this loyalty to the President's authority undoubtedly was founded upon the assumption that to this one person, and to him alone, the Constitution confides the absolute right to conduct the foreign relations of the country, and that he therefore is alone responsible, there may be room for difference of opinion at least as to the duration of time that such an obligation of loyalty would continue to be binding. Mr. Lansing's own view on this point is clear and uncompromising. To his mind there was no point of time short of the termination of the President's administration of his office, or at least the accomplishment of his purpose, when an adherence to his plans could be openly disavowed; and in this his course of conduct has been perfectly consistent.

There will be, no doubt, those who will consider that this theory of the exclusive authority and responsibility of the President in the conduct of foreign affairs is greatly exaggerated. To them it may seem, without any disposition to pass judgment, that when it became evident that the President's mind could be no longer influenced, the office of advisor was practically abolished; and that, being thenceforth exempt from further duty toward the President, a Secretary might regard himself as free by public expression to prevent, rather than promote, the ratification of a treaty so wrong in principle and so unwise in policy.

In his chapter on the "Bullitt Affair," the last in the book, Mr. Lansing declares that he could not at the time publicly deny, because without the President's approval he could not publicly explain, the truth that was contained in the words which Mr. Bullitt's breach of confidence attributed to him, which he quotes as follows:

Mr. Lansing said that he, too, considered many parts of the Treaty thoroughly bad, particularly those dealing with Shantung and the League of Nations. He said: "I consider that the League of Nations at present is entirely useless. The Great Powers have simply gone ahead and arranged the world to suit themselves. England and France have gotten out of the Treaty everything that they wanted, and the League of Nations can do nothing to alter any of the unjust clauses of the Treaty except by unanimous consent of the members of the League, and the Great Powers will never give their consent to changes in the interests of weaker peoples."

We then talked about the possibility of ratification by the Senate. Mr. Lansing said: "I believe that if the Senate could only understand what this Treaty means, and if the American people could really understand, it would unquestionably be defeated, but I wonder if they will ever understand what it lets them in for." (Senate Doc. 106, 66th Congress, 1st Session, p. 1276.)

Mr. Lansing's explanation of the paradox that, notwithstanding the truth contained in this disclosure, he still desired and publicly advocated the immediate ratification of the treaty, including the Covenant of the League of Nations, without reservations, and even feared the Senate would fail to ratify it if all that it involved was understood, is so personal, so peculiarly a question of motive, and so difficult to set forth in justice to the author in any other words than his own, that it is best left to the precise language employed by him, which is too extended to be quoted here.

It is but just to add to the imperfect summary of the contents of this volume that it is written with dignity, sincerity, and learning, and in the opinions held and defended on subjects of law and policy is worthy of careful study.

Some interesting illustrations embellish the book and a useful Appendix and excellent Index add to its value as a work of reference.

DAVID JAYNE HILL.

The United States and Latin America. By John Holladay Latané, Ph.D., LL.D. New York: Doubleday, Page & Co. 1920. pp. 346. \$2.50.

In the preface to this interesting volume, the author states that it is based on a smaller book issued by the Johns Hopkins press in 1900, under the title *The Diplomatic Relations of the United States and Spanish America*, which contained the first series of Albert Shaw Lectures on Diplomatic History. In its present form this work contains nine chapters on as many different topics relating to the political history of Latin-American countries and the diplomatic relations of the United States with them from the beginning to the present time.

In the first chapter, which deals with "The Revolt of the Spanish Colonies," the author reviews, although rather briefly, the principal events which ultimately led to the political emancipation of the Spanish Colonies in America. The next chapter deals with "The Recognition of the Spanish-American Republics." Here the author makes a presentation of the political conditions and circumstances which led, not only to the recognition of the new governments, but also to the formulation of the Monroe Doctrine, which indirectly insured their existence, protecting them against European aggression and intrigue.

Chapter three, which treats on "The Diplomacy of the United States with Regard to Cuba," contains a condensed exposition of the historical facts and diplomatic situations which brought about the Spanish-American War, the liberation of Cuba and the establishment of that island as a virtual protectorate of the United States under the terms of the so-called Platt Amendment, which determines the political relations existing between that country and the United States. The next chapter contains "The Diplomatic History of the Panama Canal," which resulted in the establishment of the Republic of Panama, the building of the Canal, and the present strained relations of Colombia and the United States.

Chapter five deals with "The French Intervention in Mexico," and Chapter six with "The Two Venezuelan Episodes." These two chapters are of positive historical value to the students of the enforcement of the Monroe Doctrine against the encroachment of European Powers upon Latin-American countries. It was on the occasion of one of these episodes that Señor Drago of Argentina restated the Calvo doctrine, which is now usually known as the Drago Doctrine, to the effect that no state has a right to resort to armed intervention for the purpose of collecting the private claims of its citizens against another state, which subsequently found expression in a resolution of the Pan-American Conference held at Rio, and later on in the Porter Resolution, which, after much discussion, culminated in the well-known resolutions of the Second Peace Conference at The Hague by which the contracting Powers agreed not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due

to its nationals, which undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer for arbitration, or, after accepting the offer, prevents any *compromis* from being agreed on, or, after the arbitration, fails to submit to the award.

The last three chapters are really the most interesting in this volume, as they deal with the history of the three most important subjects of the new world politics: "The Advance of the United States in the Caribbean," "Pan-Americanism," and "The Monroe Doctrine." In respect to the latter, the Latin-American reader will probably agree with the author that the imperialistic tendencies of our Caribbean policy, whether they be regarded as logical deductions from the Monroe Doctrine or not, have undoubtedly aroused the jealousies and fears of our Southern neighbors. One of the results has been the formation of the so-called A B C Alliance, based on treaties between Argentina, Brazil and Chile, the exact provisions of which have not been made public. This alliance doubtless serves a useful purpose in promoting friendly relations between the three great states of South America, and since the acceptance of the mediation of these powers in Mexico by President Wilson there is no reason to regard it as in any sense hostile to the United States. While the United States may very properly accept the mediation of other American states in disputes like that arising out of the Mexican situation, the United States would not feel under any obligation to consult other American states or accept their advice on any question involving the enforcement of the Monroe Doctrine. The United States has always maintained the Monroe Doctrine as a principle of self-defense and, consequently, on its own authority. In 1825 the Brazilian Government proposed that the United States should enter into an alliance with it in order to maintain the independence of Brazil in case Portugal should be assisted by any foreign Power in her efforts to reconquer Brazil. Secretary Clay replied that while President Adams adhered to the principles set forth by his predecessor, the prospect of peace between Portugal and Brazil rendered such an alliance unnecessary.

In recent years the proposal has been more than once made that the Monroe Doctrine be Pan-Americanized. This proposal was discussed by Mr. Root in his address before the American Society of International Law in 1914, in the course of which he said:

Since the Monroe Doctrine is a declaration based upon this nation's right of self-protection, it cannot be transmuted into a joint or common declaration by American states or any number of them. If Chile or Argentina or Brazil were to contribute the weight of its influence toward a similar end, the right upon which that nation would rest its declaration would be its own safety, not the safety of the United States. Chile would declare what was necessary for the safety of Chile, Argentina would declare what was necessary for the safety of Argentina, Brazil, what was necessary for the safety of Brazil. Each nation would act for itself and in its own right, and it would be impossible to go beyond that except by more or less offensive and defensive alliances. Of course, such alliances are not to be considered.

President Wilson, in his address before the Second Pan-American Scientific Congress in 1916, agreed in part with this when he said: "The Monroe Doctrine was proclaimed by the United States on her own authority. It has always been maintained, and always will be maintained, upon her own responsibility."

Except for a previous book by the same author, now out of print, the material in this present volume is not obtainable in any other single book.

This very instructive volume, as pointed out by the editors, was written primarily for college and university classes in history and political science, but its subject-matter and the method the author has used in handling this material make the book possible of wide use by the general reader.

Two maps, one of South America and the other of the Caribbean, cover the entire geography with which the book is concerned. The book also contains a table of contents and a useful analytical index.

PEDRO CAPÓ-RODRÍGUEZ.

Legal Effects of War. By Arnold D. McNair, C.B.E., M.A., LL.M.,
Cambridge: University Press. 1920. pp. xiv, 168.

The preface says that "This Volume is composed of a collection of seven essays and lectures upon several aspects of the Effect of War upon the municipal or national law of England," aimed to give "an estimate of the permanent impression made upon the law during the five years of the war." Four of these essays appeared at various times in the *Law Quarterly Review* for July, 1919, April, 1915, April, 1918, and January, 1919. The several chapters of the book "derive their origin from a course of lectures delivered as the Law Society's Lecturer in Commercial Law."

Chapter I is on "British Nationality and Alien Status in Time of War." In this chapter the author discusses nationality and domicile in general, British nationality in particular, revocation of naturalization, voluntary loss of nationality, imperial naturalization, the status of married women and minor children, German law of nationality, the status of aliens, the effect of war upon aliens, the position of alien enemies, and the definition of an alien enemy. Throughout the author refers to pertinent war legislation and points out where this differs from the law as heretofore existing. The author's distinction between nationality, domicile and residence is recommended to students of the subject. The section on British nationality is interesting as showing who are British subjects by birth, by annexation, and by naturalization.

Chapters II and III relate to the "Procedural Capacity of Alien Enemies," that is, their capacity to institute action or to defend against action in the courts of England. A historical sketch of the law on this subject is followed by a discussion of modern cases. The discussion covers alien

enemies in British territory, alien enemies who have left British territory and returned to their own country, alien enemies in Allied or neutral territory, alien enemies so declared by statute, corporations, and the effect of internment.

Chapters IV, V, VI, and VII relate to the 'Effect of War on Contracts,' and is a clear but brief discussion of the principles involved and the tendency of recent decisions. Chapter IV relates to "General Principles," and the subject is treated in accordance with the following analysis:

A. Contracts between British and Enemy Residents:

- (1) in existence at the date of the outbreak of the war.
 - (a) when a right of action has already then accrued;
 - (b) when no right of action has then accrued;
- (2) attempted to be made during war.

B. Contracts between Allied and Enemy Residents.

C. Contracts between Neutral and Enemy Residents.

D. Contracts between British Residents (or persons resident in British, Allied, or Neutral Territory).

Only special points of interest will be referred to. Whether the Statute of Limitation runs during war in cases of contracts between British and enemy residents, and whether a debt carries interest during the period of war, are not answered by any direct English authority, and the author, therefore, refers to American cases on these points. As to whether contracts are abrogated or suspended by the outbreak of war the author states, 'We shall, however, be safer in assuming that discharge is the rule, although we shall find that there are one or two classes of contract where this is not so.' (Page 64.)

The kinds of contracts which are not abrogated are contracts of tenancy and contracts for the sale of land. Such contracts are not even treated as suspended. Coming to contracts which are suspended, the author appears to find no satisfactory decisions of the courts, although no doubt certain contracts are merely suspended.

Chapter V deals with "War-Time Impossibility of Performance of Contract." The author first reviews the exceptions to the general rule that where there is a positive contract to do a lawful thing, the contractor must perform it or pay damages, such as the doctrine of "supervening impossibility of performance," or as known in maritime law "frustration of the adventure." This review places the reader in a position to understand the bearing of the recent decisions of the House of Lords in *Horlock's case* (1916), *Tamplin's case* (1916), and the *Metropolitan Water Board's case* (1917). The author finally summarizes these cases and the decisions of inferior courts involving similar points as follows:

- (a) Mere commercial impossibility or difficulty in obtaining goods, not specific goods, arising from some unforeseen cause, will not excuse a vendor from performing his contract.

(b) Impossibility which only affects a part of the thing contracted to be done, although an important part, will not discharge the contract, although the impossibility and its cause would otherwise satisfy the required test and have that effect.

(c) Mere increased cost of performance, unless to an enormous and extravagant extent, does not make it impossible. A man is not prevented from performing by economic unprofitableness unless the pecuniary burden is so great as to approximate to physical prevention.

(d) A temporary impossibility which is removed within a reasonable time cannot be used to snap a discharge of the contract. (Pages 93, 94, 95.)

Finally, the author closes the chapter with the proposal to apply "an acid test."

Two conditions must coëxist before supervening impossibility can excuse performance or further performance: (1) the cause must be such that the court will assume that if it had been mentioned to the parties during their negotiations for the contract, they would both have said, "Oh, of course, if that happened, it would knock the bottom out of our bargain"; (2) the effect of the cause must amount to real (but not necessarily physical) prevention of the performance of the whole or substantially the whole of at least one party's obligation, and must not merely mean that its performance will take place under conditions somewhat different from those contemplated. (Page 97.)

In Chapters VI and VII the author applies the principles worked out in Chapters IV and V to some of the more important kinds of contracts. First, however, he discusses the meaning of "trading with the enemy" under the common law, the maritime law, and the enemy legislation passed during the recent war. The author points out that the Trading with the Enemy Acts of Great Britain aimed broadly (1) to prevent intercourse with the enemy across the line of war and (2) to stamp out enemy influences and operations in Great Britain and elsewhere. The definition of "enemy" was at first territorial rather than personal, though the personal aspect developed later. Passing to the consideration of some particular contracts, he takes up the contracts of Affreightment, Agency, Companies, Property Insurance, Life Insurance, and Sale of Goods. A few points which strike the reviewer as interesting may be referred to.

It is not always clear to the layman or even to the lawyer whether blockade running and contraband carrying is illegal. The author points out that under British municipal law such trade ventures are not illegal, but the Government recognizes the right of belligerents to check these practices by inflicting the customary penalties. The author refers to certain cases in which contracts involving these practices have been enforced. As to a contract of agency between an agent in one belligerent representing a principal in another belligerent, he regards the outbreak of war as rendering the contract terminated in the same way as by the principal's death or insanity, and rejects the American view (*Kershaw v. Kelsey*, 100 Mass. 561) that payments may be made to the agent here of a principal in an enemy country and that the agent might remit the money to the enemy. There are some exceptions to this rule, however, in which carrying

out the agency does not require further intercourse between the agent and his principal across the line of war. The author also takes up the definition of a "Branch" of an enemy business.

Under "Companies" the author discusses the enemy character of companies and the shareholders' contract of membership. The author points out that the old view in England was that a corporation takes its character from the country in which and under whose laws it is incorporated without regard to the status of its individual members, and refers to the effort of the courts during the recent war to look back of the corporate entity and to ascertain the enemy character of the persons controlling its affairs. The case of *Daimler Company v. Continental Tyre and Rubber Company* is the case in which this turning-point in the law is made. The author touches upon the reverse situation, namely, what circumstances will be regarded by the English courts as freeing a company incorporated in enemy territory from enemy character.

Under "Partnership" the author points out that this contract is a typical case of dissolution although the property rights of the partner are preserved. A practical remedy for most of the difficulties was provided in the enemy legislation for state supervision and control of partnerships containing enemy elements.

Finally, the author takes up the effect on contracts of action by the Executive, such as prohibitions of export or import or other official action of an emergency nature. The lawful requisition by the Government of goods will excuse the seller from further performance of his contract. Where, however, the goods are not specific under the contract or the prohibition is only partial, more difficult questions arise. Many of the cases turn upon the construction of particular clauses and it is not easy to extract any general principles.

This book is an able comparison of recent decisions with pre-war opinions of the courts and shows clearly and interestingly the departures from the old rules or principles governing commercial transactions during war. It is a contribution to the legal history of the Great War.

LESTER H. WOOLSEY.

De la Guerre au Droit. By Th. Ruysen. Paris: Librairie Felix Alcan. 1920. pp. xii, 304.

This book is an unpretentious short study of a great subject. Its author is a well-known professor in the University of Bordeaux and editor of *La Paix par le Droit*. He has dedicated his "book of peace" to the memory of his "students of philosophy, who died for their country, for the right, and for the liberty of the world." Its readers will find no novel facts or conclusion within its pages. They will find simply a reënforcement of the all-too-familiar facts that past wars were hideous, that the

recent war was more hideous, and that future wars would be most hideous. Upon this fact is based the conclusion that unless the world turns from war to law, its civilization will be submerged by barbarism.

But let it not be hastily assumed that such a book serves but to carry coals to Newcastle. In our time Newcastle has far too little coal. The fact which it illustrates and reinforces is perceived, but not apperceived, by the men of our time; and the conclusion which it iterates and reiterates is accepted by our contemporaries in a half-hearted manner. Seeing, they see not; and professing, they do not really believe. To persuade a war-weary world to adopt the pacifism it professes is of like importance to inducing a sin-weary world, "converted" to Christianity, to put its Christian professions into practice.

It cannot be claimed that the author, in the pursuance of this task, is wholly consistent or entirely convincing. The author's arraignment of the World War is a severe one, although, of course, entirely inadequate; and the same may be said of his arraignment of the European diplomacy which caused the war. This diplomacy he shows to have been on all sides monarchical and not democratic, to have suppressed international aspirations for autonomy in the interests of the centralizing and absolutist pretensions of the modern state, to have been so shot through with imperialism that the World War would have come even though German imperialism had not forged to the front, and that another World War will come unless imperialistic rivalries are curbed.

His next thesis is the inadequacy of most of the attempted bases of peace, namely, religion, labor, science and peace societies; but law, international law, remains, and upon this he pins all his hope of future peace. This leads him to discuss the relation of war to law, and the sources of law in social contract and the social conscience. He shows that in primitive societies war is not only the suspension and the negation of law, but that through a long course of development due to economic, psychological, religious and philanthropic factors war has become more and more repressive or punitive of crime. With due credit to Grotius and his followers, our author regards Kant as the real founder of the philosophy of peace, which he based upon the essential conditions of municipal liberty and international arbitration. Modern pacifism, including that of President Wilson, he thinks, has not added a single vital conception to the philosophy of Kant. He admits that the Papacy was of much influence in this development, in promoting the formation of a society of nations subject to a single law; and regards it as fortunate that the decline and fall of the Papacy in international affairs was contemporaneous with the rise in 1815 of an international public law. He admits also that the diplomacy of peace in the intervals of war has played a great rôle. By this development he believes that there has been logically prepared the absorption of war in law.

This brings him on page 202 to the main thesis of his book, namely, that "modern war is, if not a judicial procedure, at least a quasi-procedure." He labors to prove this thesis by reference to the objects of recent wars, the procedure of ultimatums, etc., which accompany their commencement, the appeal to public opinion (as to seconds in a duel), the emergence of neutral rights and duties, the laws of warfare, and the ending of war by negotiations (to which neutrals are admitted, and the original question is returned to the diplomats at the point where they lost control of it). Our author in supporting this thesis admits that the laws of warfare were violated during the recent war, but claims that this was due to lack of sanction and not to the defects of the laws themselves. He also admits that at peace negotiations two equal sovereign Powers do not meet each other, but that victor and vanquished face each other; hence he uses the attenuated term "quasi procedure" as an alternative to judicial procedure. There is evidently great value in this word "quasi"; it is evidently his equivalent for the familiar "more or less." And in his eagerness to prove his thesis our author gives the impression of standing by his theory and disregarding the facts which contradict it. Even the atrocities committed in Belgium (most of which he regards as punitive, that is, judicial), he argues are themselves an evidence of law, namely, the law of a speedy and complete victory, and one of which the Germans in their *Kriegsbrauch im Landkriege*, 1902, had even given fair warning in advance as to what their enemy should expect. Upon this basis he states his conclusion: Let us develop this law of war, and supply it with sanctions until it has diminished war, just as municipal law has reduced crime.

Looking toward the future, he believes that all peace efforts henceforth should be directed toward this conversion of war into law and should follow the lines laid down by the peace congresses of Rome and Budapest in 1891 and 1896, and the principles stated by such men as Asquith, Balfour and Wilson during the World War. As for the pacifists, he believes that they will be tomorrow what they were yesterday, that is, unanimous on the great principles, but divided into irreconcilable factions on the application of these principles. Especially he believes that there will be among the pacifists the two camps of non-resistants, the opponents of all war, and the "legitimate defenders," the apologists for wars of defense. In his effort to distinguish more clearly between these two groups, he rings the changes upon such terms as "pacifistes," "jurispacistes," "l'Internationale du Droit," etc.

To the reviewer of this book, its author appears to have erred in two respects: first, in regarding war, not as the suspension or the denial of law, but as itself a law; and, second, in regarding the vital question of pacifism in the future as between non-resistants and a police force: whereas the vital question appears to be, whether the society of nations will attempt to base a durable peace upon the coercion of communities by military and

economic force, or upon the organization and exclusive application of the forces other than military and economic which are already within its grasp.

WM. I. HULL.

The United States of America: A Study in International Organization.
By James Brown Scott. New York: Oxford University Press, American Branch. 1920. pp. xx, 605.

No person has been more indefatigable than has Dr. Scott in urging forward the project of a permanent court of international justice, nor more controlled by the conviction that the constitutional system of the United States furnishes a prototype of a feasible form of union between the independent States of the world, and that the decisions of the American judiciary provide at once a basis for the jurisprudence of an international court, if and when established, and a demonstration that such a tribunal may with safety and profit be established by the nations of the world. In a recent issue of this JOURNAL (October, 1920), the reviewer published a notice of the two volumes, edited by Dr. Scott, giving the texts of opinions rendered by the Supreme Court of the United States in cases in which controversies between the States of the American Union have been adjusted, and of a third volume in which Dr. Scott analyzed these cases and opinions. In addition, in collaboration with Mr. Gaillard Hunt, Dr. Scott has issued, through the Carnegie Endowment, an edition of James Madison's *Notes of Debates in the Federal Convention of 1787*, and, in a separate volume, an analysis, by himself, of these *Notes*. We now have another treatise, issued in the same sumptuous form by the Carnegie Endowment for International Peace, in which Dr. Scott has surveyed the steps leading up to the establishment in 1789 of "a more perfect Union" than that provided by the Articles of Confederation, and has considered with especial care the jurisdiction vested in the judicial department of this more perfect Union.

Preliminary chapters deal with the idea of union of the colonies as it found expression, prior to the Revolutionary War, in the plans of Penn and Franklin; with the movement for independence from Great Britain; with the confederation of the sovereign States, as they had become after their several ties to the mother country had been broken; with the historical precedents—the colonial charters, the rise of representative institutions, the settlement of boundary disputes between the colonies, the character of the constitutions which the thirteen States had adopted for themselves—which, in 1787, furnished pragmatic material for the guidance of the framers of the new federal Constitution. The work of the Federal Convention is then carefully analyzed in order to show the nature of the

problem that had to be met, the various alternatives that were offered, and the results finally reached. At every point, the feature that is emphasized is the working out of the problem of obtaining the harmonious coöperation, through law, of independent or quasi-independent States. The Federal Convention is designated as "An International Conference," and the American constitutional system as a "federal" rather than as a "national" union.

Dr. Scott does not slight the functions of the federal executive and the Congress, but his chief concern is evidently with the judiciary, and, of course, particularly with the Supreme Court. The historical origins of this tribunal and of its jurisdiction are carefully traced, the article by J. C. Bancroft Davis on "Federal Courts Prior to the Constitution" and Professor J. F. Jameson's study, "The Precedents of the Supreme Court," being paraphrased for this purpose. The chapter dealing with the establishment of the Supreme Court is entitled "Prototype of a Court of International Justice." After quoting Madison's Notes of the debate in which it was decided by the convention that the Supreme Court should have jurisdiction of controversies between the States, Dr. Scott says:

"We are indeed fortunate to have even this brief account of one of the silent revolutions in the thought and therefore in the practice of mankind, for, with the lessons of history before them and with no exact precedent for their action, the members of the convention recognized that the submission of a dispute between nations to a judicial tribunal makes of it a judicial question, and therefore a proper subject of judicial power, as pointed out by the agent of their creation in the controversy between Rhode Island and Massachusetts decided in 1838."

The chapter closes with the following statement, which deserves quotation in full:

It is obvious that the Society of Nations will be confronted with problems similar to if not identical with the problems which faced the framers of the American Constitution when they set about to create a Supreme Court of the Union which they were rendering more perfect. The Convention creating the closer union of the Society, like the Constitution creating the more perfect union of American States, will need to be interpreted, and the experience of the United States shows that this can best be done by a permanent court of the union.

General conventions or special treaties to which States of the Society of Nations are parties, will need to be interpreted; but, here again, the experience of the American Union, with its tribunal, should be enlightening.

A court of the Society will necessarily be a court of limited jurisdiction; but, with the growth of confidence in that tribunal, its jurisdiction will be enlarged in the way pointed out by the Supreme Court itself; that is to say, by an agreement to submit to the tribunal questions hitherto considered political, questions which, by the very act, of submission, become judicial.

Gradually, as the result of experience, the usefulness of the court will be thus enhanced. The possibility of the substitution of law for physical force may dawn upon the statesmen of the modern world just as it dawned upon the framers of the American Union, and the conduct of nations, like the conduct of States of the American Union, be guided and eventually controlled by the principles of justice.

Coercion there must be, for nations, as shown by experience, are even less inclined than individuals to brook control; but the choice is, and it is believed the choice must always be, either for the coercion of law, or for the coercion of arms.

Space will not permit consideration of the chapters of Mr. Scott's book which deal in detail with the nature of judicial power, and the extent of the jurisdiction of the Supreme Court. In these chapters particular attention is, of course, devoted to the power of the court to adjudicate in suits between the States of the Union and in those in which the United States is a party. Again is emphasized, as was emphasized by Dr. Scott in his *Judicial Settlement of Controversies between States of the American Union*, that, though the Supreme Court decides for itself whether it has jurisdiction of a case brought before it, it has not sought to overstep the limits of its jurisdiction as constitutionally fixed. Hence, *arguendo*, the same result may be expected of an international court of justice for all nations, should it be established. Dr. Scott does not, however, find it necessary to point out the extent to which the immunity from suit at the instance of private individuals, as guaranteed by the Eleventh Amendment to the Constitution, has been whittled away by court, nor does he find it necessary to dwell upon the doctrines declared in the suit of Virginia against West Virginia.

The volume is well indexed, and, as appendices, the texts of some twenty of the most important source documents are given.

In concluding this notice, the reviewer must admit that the question has arisen in his mind whether Dr. Scott would not have better achieved his purpose if, instead of giving us a very large volume, much of it rehearsing very well known and readily available facts, he had supplied his readers with a critical essay, which could have easily been brought within the compass of a hundred pages, in which would be argued the lessons which the American federal experiment has to teach the world with regard to the maintenance, through law, of international peace and coöperation.

W. W. WILLOUGHBY.

The American Supreme Court as an International Tribunal. By Herbert A. Smith, M.A., of the Inner Temple; Professor of Jurisprudence and Common Law, McGill University. New York: Oxford University Press. 1920. pp. viii, 123.

This treatise begins with the affirmation (p. iii) that "whatever form the League of Nations may ultimately take, it must contain some provisions for the settlement by judicial means of justiciable disputes between members of the League." This proposition can hardly be held to have been maintained by the reasons which the author proceeds to bring forward. A League of Nations *may*, but not *must*, offer a mode of dealing judicially with any justiciable question arising between sovereign states. States

may form a League of Nations with power to settle some kinds of disputes between them, but not all.

The Supreme Court of the United States is regarded by the author as the "only permanent court, as distinguished from occasional arbitration commissions, which has hitherto attempted in any degree to discharge the functions of a true international tribunal" (p. iii).

He does not write primarily for lawyers, but for the general public. In treating his subject he has the advantages and disadvantages of a foreigner, namely, a certain breadth of view, and, on the other hand, a less intimate knowledge of American legal history. Thus, he quotes what he describes as "Marshall's phrase" to prove that "the American Constitution" was designed to be "a government of laws and not of men," whereas the expression appears in the Constitution of Massachusetts, and was put there by John Adams, following the thought of Harrington (p. 32). So, also, Professor Smith ignores the closing words of the Tenth Amendment of the Constitution of the United States by declaring that "the Federal Government in all its powers is theoretically only an agent enjoying such limited powers as have been delegated to it by the joint authority of the sovereign and independent States" (p. 1). In commenting upon the doctrine of the *Dred Scott* case, he says that the decision could not be overruled except by a constitutional amendment (p. 51). It could, however, be reconsidered by the court, should it be convinced that it was erroneous. The court does not, as does the British House of Lords, claim to be infallible.

How far has the Supreme Court of the United States dealt with international disputes in the character of an international tribunal? Professor Smith applauds its course in this respect. It has moved steadily but slowly.

It does not feel that it is entitled to consider what may be called the diplomatic or political aspects of any controversy. Nor under the American Constitution would any other than the strictly legal method be possible (p. 57). . . . The fact that the English Common Law is the foundation of American jurisprudence has supplied the Court with a coherent body of doctrine which enables it to render a series of judgments resting upon a uniform basis of principle. These principles must be carefully borne in mind when it is desired to create a Court of the Nations with functions in any way resembling those of the Supreme Court of the United States. If we are to establish any kind of permanent tribunal, as distinguished from occasional arbitration commission, we must provide it, in outline, at least, with a consistent body of rules upon which to work (pp. 57, 58).

National boundaries are not always fixed by history, nor readily determinable by courts.

In the present year (1919) the civilized world is busily engaged in breaking up arrangements which have centuries of established title to support them. The fact that an injustice has lasted a long time is an insufficient reason for deciding that it must continue forever. It is not within the province of this essay to lay down rules

for the settlement of such questions. Present indications point to the adoption in some form or other of the doctrine of the *plebiscite*, though this, too, has its difficulties, especially in dealing with mixed populations and undeveloped races. But it is essential to understand that unless some common principles of decision are agreed upon by the civilized world, these grave political controversies cannot be judicially settled at all (pp. 57, 58).

The far-flung issues presented in *Kansas v. Colorado* are deservedly made the subject of particular consideration. The author regards that case as making rules for itself as it went along.

It illustrates the difficulty with which an international court must frequently be faced of having no accepted rule of law applicable to the particular dispute. The laws of the two States upon the subject-matter of the controversy were in sharp conflict, and there was no rule of superior authority binding upon both parties. It is by no means satisfactory for litigants to have their dispute settled according to a rule manufactured by the court to meet the particular emergency. The actual decision reached was in the nature of a compromise, as is often the case in international arbitrations (p. 88).

The author closes, as he began, by recognizing the coexistence of the sovereignty of each American State, and that of the United States, but treats this as really a legal fiction (p. 110).

Opposition to the Court appears from time to time in American politics, but such opposition no longer follows State lines, and is not based upon any theory of State rights. The lesson of this for our own day would appear to be that the strength of any international court will be in inverse proportion to the strength of national feeling in the States composing the League. No statesman of any country would suggest to-day that the nations of the world should surrender to any league powers anything like so great as those committed to the Federal Government by the Constitution of the United States. . . . It is neither possible nor desirable to fuse the existing civilized States of the world into a single nation and any international tribunal will have to deal with States in which sovereignty is not merely a legal formula, but a political fact (pp. 110, 111).

The practical lessons which are to be drawn from a study of the work of the Supreme Court of the United States are summarized thus:

1. "Certain cases in which the existence, the honor, or the most vital interests of the nations are involved, can only be settled by agreement or, in the last resort, by war."

2. "A permanent international tribunal, constructed on sound principles, will lead in the course of time to the growth of an international practice of submitting controversies to judicial decision."

3. The enforcement of international judgments must be clearly provided for.

4. "The judgments of an international tribunal will not command general assent unless it administers a definite and written system of international law drawn up by the agreement of all the States which become members of the League" (pp. 119, 120).

SIMEON E. BALDWIN.

Geschichte des Völkerbundgedankens in Deutschland. By Veit Valentin.
Berlin: Hans Robert Engelmann. 1920. pp. vi, 170.

The author has assembled a mass of material bearing upon international peace and world organization, from writings during the past two centuries of German philosophers, historians, and publicists. He has analyzed and compared the material, and he has described the environment, personal and historical, under which these contributions came to be written. The *dénouement* leads the author to contemplate the wide discrepancy between the quantity of energy expended in Germany in the cause of peace and the sterility of achievement with the official classes and the reigning dynasty. He therefore seeks to explain this result which, to borrow a recent title, might have been designated quite properly, at least from a German viewpoint, "the greatest failure in all history." Let the author speak. He is referring to the period of the Hague Conferences.

Official and Imperial Germany was cold toward the idea of a community of states. . . . Official Germany unfortunately failed to observe that for more than a generation something new had developed in the great world. The spirit of the French Revolution had entered into a spiritual marriage with Anglo-Saxon Puritanism from which issued political doctrines of tremendous attraction. Nothing less than a second epoch of enlightenment had developed, having many characteristics, both of strength and weakness, of the movement of the eighteenth century. Toward this phenomenon Imperial Germany adopted an attitude almost archaic. . . . Germany became the land of political romanticism. This great contrast of spirit then combined with more material divergencies. The new political orientation was adopted in western Europe and America by the interests of bourgeois capitalism, while the same classes in Germany rendered service to the political romanticism of the absolutistic state. Enlightenment conquered romanticism, or to express it in terms of the antithesis with which we have become familiar in this history of the league-of-nations idea in Germany, Kant conquered Hegel (pp. 154-155).

It is, of course, necessary to follow the author's analysis of German thought contained in the body of the work before one fully understands his meaning. He begins with Leibniz, who sought to apply the plans of the Abbé St. Pierre and of Crucé toward strengthening the Holy Roman Empire and making it a true *civitas dei*. Leibniz and his school justified this end mainly upon teleologic principles. Against this complacent philosophy, the most effective blow was struck by Rousseau. The author thinks that Rousseau changed the whole trend of German pacifist thought, for his influence was widely reflected in the writings of Herder, Wieland and Kant.

The author rightly gives to Kant the place of honor among German philosophers dealing with international relations. He emphasizes the fact that Kant was the first to develop the idea of a league of nations upon purely ethical and legal grounds. Kant favored the idea as a result of logical deductions, whereas with Schelling and Wagner it was the goal

of universal evolution; and with Novalis, a religious postulate (p. 54). The author points to the widespread influence of Kant outside Germany; what is of especial interest to us, he indicates that the resolutions of the Massachusetts Legislative Assembly of 1844, dealing with a league of nations, followed closely the proposals of Kant (p. 80).

In direct conflict with the Kantian school was the philosophy of Hegel, for it could not tolerate the idea of any limitation upon the sovereignty of states. The Hegelian statesman regards even the conception of a binding treaty between states only in the nature of a paradox. The author's analysis of the many contributions made by others on both sides of this irrepressible conflict is most valuable; it is clear, logical, and yet not overextended.

Curiously enough, so far as the practical elaboration of plans for world organization is concerned, the most notable contributions were not made by Germans at all, but by two distinguished Swiss publicists, Sartorius and Bluntschli, who for a time taught at German universities. Even Vattel, to whom the author refers as "the Geheimrat of Dresden" (p. 91), was also Swiss, although long in the diplomatic service of Saxony.

In the conflict between the Kantian and Hegelian philosophies, the author discovers an explanation of the World War. But the war did not prove so much that Kant had conquered Hegel in the world outside Germany, as that Hegel conquered Kant in the homeland of both. Indeed, Kant's victory still remains to be won. No one seems to realize this better than the author; and, having made his apology, he finally asserts his hope that, in the end, national and international interests may tend to become identified through the influence of better social education and the growth of human solidarity.

ARTHUR K. KUHN.

A Monograph on Plebiscites, with a collection of official documents. By SARAH WAMBAUGH. Prepared under the supervision of James Brown Scott, Director of the Division of International Law of the Carnegie Endowment for International Peace. New York: Oxford University Press, 1920, pp. xxxv + 1088.

The Employment of the Plebiscite in the Determination of Sovereignty. By JOHANNES MATTERN. [Johns Hopkins University Studies in Historical and Political Science, Series XXXVIII, No. 3.] Baltimore: The Johns Hopkins Press, 1920, pp. ix + 214.

When President Wilson returned to the Peace Conference in March, 1919, he carried with him advance sheets of a part of Miss Wambaugh's work, which had been in preparation during the preceding year, and which

has since been completed and published. The President himself had declared on the Fourth of July, 1918, that "the settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, must be upon the basis of free acceptance of that settlement by the people immediately concerned," and his repeated enunciation of the doctrine of national self-determination had been accepted as inspired guidance for the deliberations of the peace congress in Paris.

It is doubtful whether President Wilson studied Miss Wambaugh's book with care during those March days aboard the *George Washington*, but it is to be hoped at any rate that all serious students of international law, especially those interested in the problems dependent upon transfers of sovereignty, will possess it and use it. It is sound and reliable. As a work of reference it is unique and invaluable.

Miss Wambaugh devotes 170 pages to a clear and succinct historical essay on the practical use of the plebiscite, or referendum, in sanctioning changes of sovereignty through separation, cession, and annexation, beginning with the French Revolution. She shows how at first it was applied in good faith in the annexations of Avignon, Savoy and Nice, and then used as a political subterfuge in the later annexations of the Belgian communes and the Rhineland, only to be destroyed by Napoleon's growing ambition for conquest over a world of enemies. The next and most prosperous period of plebiscitary history was from 1848 to 1870. Says the author:

Recognized as the creative force of the new Italian kingdom; made the basis of the union of Tuscany, Emilia, Sicily, Naples, the Marches, and Umbria; repeated in the subsequent union of Venetia and Rome; stipulated in the treaty of Turin for the cession of Savoy; endorsed, though unsuccessfully, by the chief Powers at the Conference of London as the only solution for the Schleswig question; followed by Great Britain in her cession of the Ionian Islands to Greece; inserted in the treaty of Prague between Austria and Prussia:—by 1866 the method of appeal to a vote of the inhabitants, either by plebiscite or by representative assemblies especially elected, bade fair to establish itself as a custom amounting to law. Another philosophy was rising, however. The Prussian annexation of Schleswig in 1867, without regard to the provisions of the treaty of Prague, and the annexation of Alsace-Lorraine in 1871 dealt the principle a blow which, the world being under German tutelage in matters of historical criticism and the philosophy of the state, was practically fatal. After 1870 it was given a nebulous continuance by the treaty of 1877 between France and Sweden for the cession of St. Bartholomew, and by the treaty of Ancon between Chile and Peru.

From the Congress of Berlin in 1878 to the outbreak of the World War in 1914 the notion of self-determination had no place in the international usages of Europe.

Essentially, however, Miss Wambaugh's work is not an historical essay or a legal study. It is first and foremost a source-book, presenting in chronological sequence the chief documents relating to plebiscites—precisely how they were authorized, how they were taken, and what were their

results—from the plebiscite of Avignon in 1791 to that of Norway in 1905. The original text of each document is given wherever available and is paralleled by an English translation. In some cases extracts have been made where space could be economized without sacrificing accuracy in presentation. On the whole, the work is done thoroughly and well. Altogether it constitutes a store-house of information for the discerning student not only as to the practical uses of the plebiscite, but also as to its historical abuses.

Dr. Mattern's book, though undertaken as a doctoral dissertation and quite independently, nicely supplements Miss Wambaugh's. It is not a collection of documents, but an historical essay and a legal study. Dr. Mattern devotes five of his nine chapters to a critical historical survey, which, like Miss Wambaugh's, treats of the plebiscites of the French Revolution and of the nineteenth century, but which, unlike Miss Wambaugh's, deals with "the plebiscite in ancient and feudal times," and with "the plebiscites in the peace treaties ending the World War."

His chapter on ancient and feudal times is largely negative in character: it repeats the well-known fact that ancient Greece and Rome practiced a kind of plebiscite in their internal affairs but recognized nothing of the sort in foreign relations, and it manfully combats the contention of Solière that from the thirteenth to the fifteenth centuries no annexation could be pronounced "without the assent of the people or of the notables."

In fact Dr. Mattern's whole historical survey is pessimistic in tone. He makes it clear that prior to the World War the principle of national self-determination had been recognized, and the plebiscite had practically been employed, "only in individual cases and with the consent of, or upon pressure from, the Power or Powers directly or indirectly interested in each instance as it presented itself" (p. 128). And his study of the sorry intricacies of Parisian diplomacy in 1918-1919 confirms and strengthens his depression. President Wilson went to Paris in March, 1918, with Miss Wambaugh's book. Dr. Mattern's book might appropriately have accompanied the President back to the United States.

The most valuable part of Dr. Mattern's work is the last three chapters, wherein he discusses various aspects of the plebiscite in the light of its uses and abuses from 1789 to 1919. He considers it in practice and in theory from the standpoint of international law and from that of constitutional law. He concludes "that the Peace Treaties ending the World War have so far not established a universal or even general practice of a settlement of territorial questions on the basis of the principle of self-determination by the plebiscite, nor have they eliminated acquisitions of territory on the implied principle if not the expressed terms of conquest" (p. 194). He maintains that, from the point of view of constitutional law, no state can recognize the right of secession founded upon the principle of self-determination, and he renews the doubt expressed by Oppenheim in 1912

"whether the law of nations will ever make it a condition of every cession that it must be ratified by a plebiscite." The reviewer cannot agree with Dr. Mattern in every respect—he thinks his book leans too much toward Lieber, Holtzendorff, and Bluntschli, and not enough toward Fusinato and Fiore—but he can with earnestness recommend it as a sane and scholarly study of a significant problem in international relations. It is an important contribution to a subject which has now for the first time been fully opened to us by the publication of Miss Wambaugh's monumental collection of documents.

CARLTON J. H. HAYES.

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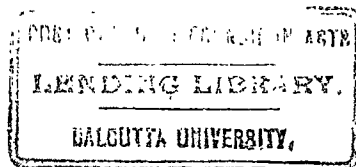
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OFFICIAL DOCUMENTS

TRIPARTITE AGREEMENT BETWEEN THE BRITISH EMPIRE, FRANCE AND ITALY RESPECTING ANATOLIA¹

Signed at Sèvres, August 10, 1920

The British, French and Italian Governments, respectively represented by the undersigned plenipotentiaries,

Being anxious to help Turkey, to develop her resources, and to avoid the international rivalries which have obstructed these objects in the past,

Being desirous to meet the request of the Turkish Government that it should receive the necessary assistance in the reorganization of the administration of justice, the finances, the gendarmerie and the police, in the protection of religious, racial and linguistic minorities and in the economic development of the country,

Considering that the autonomy or eventual independence of Kurdistan has been recognized by them, and that it is desirable, with a view to facilitating the development of that country and the provision of any assistance which may be required in its administration, to avoid international rivalries in such matters,

Recognizing the respective special interests of Italy in Southern Anatolia and of France in Cilicia and the western part of Kurdistan bordering on Syria, up to Jezireh in Omar, as these areas are hereafter defined,

Have agreed upon the following provisions:

ARTICLE 1

There shall be perfect equality in Turkey between the contracting Powers in the composition of all international commissions, whether existing or to be established (including the different services dependent thereon) charged with the reorganization and supervision in a manner consistent with the independence of the country of the different public services (judicial and financial administrations, gendarmerie and police) and of ensuring the protection of racial, religious and linguistic minorities.

However, in the event of the Turkish Government, or the Government of Kurdistan, being desirous of obtaining external assistance in the local administration or police of the areas in which the special interests of France and Italy are respectively recognized, the contracting Powers under-

¹ British Treaty Series, 1920, No. 12.

take not to dispute the preferential claim of the Power whose special interests in such areas are recognized to supply such assistance. This assistance shall be specially directed towards enhancing the protection afforded to racial, religious or linguistic minorities in the said areas.

ARTICLE 2

In accordance with the provisions of the Treaty of Peace with Turkey, the nationals of the contracting Powers, their ships and aircraft, and products and manufactured articles coming from or going to the territories, dominions, colonies or protectorates of the said Powers, shall enjoy in the said areas perfect equality in all matters relating to commerce and navigation, and particularly as regards transit, customs and similar matters.

Nevertheless, the contracting Powers undertake not to apply, nor to make or support applications on behalf of their nationals, for industrial or commercial concessions in an area in which the special interests of one of the said Powers are recognized, except in cases where such Power declines or is unable to take advantage of its special position.

ARTICLE 3

The contracting Powers undertake to render diplomatic support to each other in maintaining their respective positions in the areas in which their special interests are recognized.

ARTICLE 4

The Anatolian railway, the Mersina-Tarsus-Adana railway and that part of the Bagdad railway which lies in Turkish territory as defined by the Treaty of Peace with Turkey shall be worked by a company whose capital will be subscribed by British, French and Italian financial groups. Part of the capital will be allotted to British, French and Italian groups in return for the interests that such groups may respectively have held in the Bagdad line as a whole on August 1, 1914; the rest of the capital will be divided equally between the British, French and Italian groups.

Nevertheless, in exchange for the whole or part of the interests owned by French nationals on August 1, 1914, in the Bagdad railway line, the French Government reserves the right to have conceded to it and to work the whole or part of the railway lines (including the Mersina-Tarsus-Adana line) which lie in the area in which its interests are specially recognized. In such event the share of French nationals in the company provided for in the preceding paragraph will be reduced by a proportion corresponding to the value of the lines which are thus conceded to the French Government. This right of the French Government must be exercised within twelve months from the coming into force of the Treaty of Peace with Turkey.

In the operations of the company constituted as provided by the first

paragraph of this article account will be taken of the particular rights and interests of the respective governments which are recognized in the areas defined by the present agreement, but in such a way as not to injure the good working of the railways.

The contracting Powers agree to support the unification in the near future of the entire railway system in the territory which remains Turkish by the establishment of a joint company for working the lines. The division of the capital of this new company will be settled by agreement between the groups concerned.

The company constituted as provided by the first paragraph of this article, as well as any company which may be formed for the purpose indicated in the fourth paragraph, will alike be bound to comply with the provisions of Part XI (Ports, Waterways and Railways) of the Treaty of Peace with Turkey, and in particular to accord absolute equality of treatment in respect of railway rates and facilities to goods and passengers of whatever nationality, destination or origin. The French Government undertakes, in the event of its exercising the right provided for in the second paragraph of this article, to comply with the same provisions in respect of any railway line so conceded to it.

ARTICLE 5

For the purpose of the present agreement (*see* MAP):¹

1. The area in which the special interests of France are recognized is comprised within the following boundaries:

On the south:

From the mouth of the Lama Su on the Gulf of Alexandretta to a point where the northern frontier of Syria as described in the Turkish Peace Treaty meets the sea:

the Mediterranean Sea;

thence eastwards to the southwestern extremity of the bend in the Tigris about 6 kilometres north of Azekh (27 kilometres west of Djezire-Ibn-Omar),

the northern frontier of Syria as described in the Treaty of Peace with Turkey;

On the east:

thence northwards to the confluence of the Hazo Su with the Tigris,

the course of the Tigris upstream;

thence northwards to a point on the Hazo Su due south of Meleto Dag,

the course of the Hazo Su upstream;

thence due north to Meleto Dag,

a straight line;

¹ Omitted from this SUPPLEMENT.

On the north:

thence northwestwards to the point where the boundary between the vilayets of Diarbekir and Bitlis crosses the Murad Su,

a line following the line of heights Meleto Dagħ, Antogh Dagħ, Siri-I-Siri Dagħ, Chevtela Dagħ;

thence westwards to its confluence with the Kara Su (Euphrates),

the course of the Murad Su downstream;

thence northwards to Pingan on the Kara Su (Euphrates),

the course of the Kara Su (Euphrates) upstream;

thence northwestwards to Habash Dagħ,

a straight line;

thence westwards to Batmantash,

a line following the line of heights Habash Dagħ, Terfellu Dagħ, Domanli Dagħ;

On the west:

thence southwards to Yenikhan,

a straight line;

thence southwestwards to Ak Dagħ on the boundary between the vilayets of Sivas and Angora,

a line reaching and then following the crest line of Ak Dagħ;

thence southwards to a point due west of Seresek,

the boundary between the vilayets of Sivas and Angora;

thence southwestwards to Erdjias Dagħ (the point where the boundary of the Italian zone as defined below joins the western boundary of the French zone),

a straight line:

thence southwestwards to Omarli:

a line following the line of heights Erdjias Dagħ, Devli Dagħ and Ala Dagħ;

thence southwards to the confluence of the Tarbaz Chai and the river descending from Kara Geul,

a straight line;

thence in a southwesterly direction to the bend about 5 kilometres southwest of its mouth,

the course of the river flowing from Kara Geul upstream;

thence southwestwards to Perchin Bel,

a line following the crest of the Bulgar Dagħ;

thence southeastwards to the source of the Lama Su,

a straight line;

thence to its mouth on the Gulf of Alexandretta,

the course of the Lama Su downstream.

2. The area in which the special interests of Italy are recognized is comprised within the following boundaries:

On the east:

from the mouth of the Lama Su on the Gulf of Alexandretta to Erdjias Dagħ,

the western boundary of the area in which the special interests of France are recognized, as described above;

On the north:

thence westwards to Akshehr railway station,

a straight line, modified however to leave the railway from Akshehr to Konia within the area;

thence northwestwards to Kutaya,

a line following the railway line from Akshehr to Kutaya (the railway remaining without the area);

thence northwestwards to Keshish Dagħ,

a straight line;

thence westwards to the most easterly point of contact of the southern boundary of the Straits Zone with Abulliont Geul,

a straight line;

On the west:

thence in a southerly direction to the mouth of the river which flows into the *Ægæan* Sea about 5 kilometres north of Skalanova,

the southern boundary of the Straits Zone, the northern, eastern and southern boundaries of Smyrna, as they are described in the Treaty of Peace with Turkey:

On the south:

thence to the mouth of the Lama Su on the Gulf of Alexandretta, the *Ægæan* Sea and the Mediterranean Sea.

ARTICLE 6

In relation to the territories detached from the former Turkish Empire and placed under mandate by the Treaty of Peace with Turkey, the mandatory Power will enjoy *vis-à-vis* of the other contracting Powers the same rights and privileges as the Powers whose special interests are respectively recognized in the area defined in Article 5 enjoy in the said areas.

ARTICLE 7

All concessions for exploiting the coal basin of Heraclea, as well as the means of transport and loading connected with these concessions, are reserved for the Italian Government, without prejudice to all rights of the same nature (concessions granted or applied for) acquired by Allied or neutral nationals up to October 30, 1918. As regards rights of exploitation belonging to Turkish subjects, their indemnification will take place in agreement with the Turkish Government, but at the cost of the Italian Government.

Nevertheless, on the date on which the Italian Government or the Italian companies shall have brought their annual production of coal up to an amount equal to that produced as on January 1, 1930, by companies belonging on October 30, 1918, to Allied or neutral nationals, the Italian Government agrees in a spirit of equity to reserve for the *Société ottomane d'Eracleé*, constituted with French capital (in the event of the latter not having previously expressed the wish to be bought out or to abandon the renewal of its concession), a quarter share in the interest which may be formed, once Italy or the Italian companies shall have reached a production of coal equal in amount to that of the said Allied and neutral nationals as on January 1, 1930.

The two governments will give each other mutual diplomatic support with a view to securing from the Turkish Government the issue of fresh ordinances, ensuring the exploitation of the mining rights conceded, the establishment of means of transport, such as mining railways and every facility for loading, as well as the eventual employment of other than Turkish labor, and corresponding to the demands of modern methods of exploitation. It is hereby agreed that all concessions, whether granted after or before the issue of the above ordinances, will be equally entitled to all benefits and advantages resulting from their coming into force.

ARTICLE 8

The French and Italian Governments will withdraw their troops from the respective areas where their special interests are recognized when the contracting Powers are agreed in considering that the said Treaty of Peace is being executed and that the measures accepted by Turkey for the protection of Christian minorities have been put into force and their execution effectively guaranteed.

ARTICLE 9

Each of the contracting Powers whose special interests are recognized in any area in Turkish territory shall accept therewith the responsibility for supervising the execution of the Treaty of Peace with Turkey with regard to the protection of minorities in such area.

ARTICLE 10

Nothing in this agreement shall prejudice the right of nationals of third states to free access for commercial and economic purposes to any of the areas defined in Article 5, subject to the reservations which are contained in the Treaty of Peace with Turkey, or which have been voluntarily accepted for themselves in the present agreement by the contracting Powers.

ARTICLE 11

The present agreement, which will be ratified, will be communicated to the Turkish Government. It will be published and come into force at the

same time as the Treaty of Peace with Turkey comes into force between the three contracting Powers.

DONE at Sèvres, the tenth day of August, one thousand nine hundred and twenty.

GEORGE GRAHAME.
A. MILLERAND.
BONIN.

TREATY BETWEEN THE UNITED KINGDOM AND CHILE FOR THE ESTABLISHMENT
OF A PEACE COMMISSION.¹

*Signed at Santiago, March 28, 1919; ratifications exchanged
October 23, 1919.*

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and his Excellency the President of the Republic of Chile, being desirous to strengthen the bonds of amity that bind them together, and also to advance the cause of general peace, have resolved to enter into a treaty for that purpose, and to that end have appointed as their plenipotentiaries:

His Britannic Majesty: his Excellency Sir Francis Stronge, his Envoy Extraordinary and Minister Plenipotentiary at Santiago; and

His Excellency the President of the Republic of Chile: his Excellency Don Luis Barros Borgoño, Minister of Foreign Affairs;

Who, after having communicated to each other their respective full powers, found to be in proper form, have agreed upon and concluded the following articles:

ARTICLE 1.

The high contracting parties agree that all disputes between them, of every nature whatsoever, other than disputes the settlement of which is provided for and, in fact, achieved under existing agreements between the high contracting parties, shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a Permanent International Commission, to be constituted in the manner prescribed in the next succeeding article; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted.

ARTICLE 2.

The international commission shall be composed of five members, to be appointed as follows:

One member shall be chosen from each country by the government

¹ British Treaty Series (1920), No. 3.

thereof; one member shall be chosen by each government from some third country; the fifth member shall be chosen by common agreement between the two governments, it being understood that he shall not be a citizen of either country.

The expenses of the commission shall be paid by the two governments in equal proportions.

The international commission shall be appointed within six months after the exchange of the ratifications of this treaty, and vacancies shall be filled according to the manner of the original appointment.

ARTICLE 3.

In case the high contracting parties shall have failed to adjust any such dispute by diplomatic methods, they shall at once refer it to the international commission for investigation and report. The international commission may, however, spontaneously, by unanimous agreement, offer its services to that effect, and in such cases it shall notify both governments and request their cooperation in the investigation.

In the event of its appearing to His Majesty's Government that the British interests affected by the dispute to be investigated are not mainly those of the United Kingdom, but are mainly those of some one or more of the self-governing Dominions, namely, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland, His Majesty's Government shall be at liberty to substitute as the member chosen by them to serve on the international commission for such investigation and report another person selected from a list of persons to be named, one for each of the self-governing Dominions, but only one shall act, namely, that one who represents the Dominion immediately interested.

The high contracting parties agree to furnish the Permanent International Commission with all the means and facilities required for its investigation and report.

The report of the international commission shall be completed within one year after the date on which it shall declare its investigation to have begun, unless the high contracting parties shall limit or extend the time by mutual agreement. The report shall be prepared in triplicate; one copy shall be presented to each government and the third retained by the commission for its files.

The high contracting parties reserve the right to act independently on the subject-matter of the dispute after the report of the commission shall have been submitted.

ARTICLE 4.

The present treaty shall be ratified, and the ratifications shall be exchanged at Santiago as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period

of five years, and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.

In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.

Done in duplicate at Santiago, on the twenty-eighth day of March, in the year of Our Lord one thousand nine hundred and nineteen.

[Signed]

FRANCIS STRONGE.

LUIS BARROS BORGÑO.

TREATY BETWEEN THE PRINCIPAL ALLIED AND ASSOCIATED POWERS AND
GREECE.¹

Signed at Sèvres, August 10, 1920.

THE BRITISH EMPIRE, FRANCE, ITALY AND JAPAN, the Principal Allied and Associated Powers, on the one hand;

And GREECE, on the other hand;

Whereas since January 1, 1913, large accessions of territory have been made to the Kingdom of Greece, and

Whereas the Kingdom of Greece, which has given to the populations included in its territories, without distinction of origin, language or religion, equality of rights, is desirous of confirming these rights and of extending them to the populations of the territories which may be added to the Kingdom, so that they shall have a full and complete guarantee that they shall be governed in conformity with the principles of liberty and justice, and

Whereas it is desired to free Greece from certain obligations which she has undertaken towards certain Powers, and to substitute for them obligations to the League of Nations, and

Whereas it is desired also to free Greece from certain other obligations which she has undertaken to certain Powers and which constitute a restriction upon her full internal sovereignty;

For this purpose the high contracting parties have appointed as their plenipotentiaries:

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

The Right Honorable Edward George VILLIERS, Earl of DERBY, K.G., P.C., K.C.V.O., C.B., Ambassador Extraordinary and Plenipotentiary of His Britannic Majesty at Paris;

¹ British Treaty Series, 1920, No. 13.

And

for the DOMINION OF CANADA:

The Honorable Sir George Halsey PERLEY, K.C.M.G., High Commissioner for Canada in the United Kingdom;

for the COMMONWEALTH OF AUSTRALIA:

The Right Honorable Andrew FISHER, High Commissioner for Australia in the United Kingdom;

for the DOMINION OF NEW ZEALAND:

The Honorable Sir James ALLEN, K.C.B., High Commissioner for New Zealand in the United Kingdom;

for the UNION OF SOUTH AFRICA:

Mr. Reginald Andrew BLANKENBERG, O.B.E., Acting High Commissioner for the Union of South Africa in the United Kingdom;

for INDIA:

Sir Arthur HIRTZEL, K.C.B., Assistant Under-Secretary of State for India;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr. Alexandre MILLERAND, President of the Council, Minister for Foreign Affairs;

Mr. Frédéric FRANÇOIS-MARSAL, Minister of Finance;

Mr. Auguste Paul-Louis ISAAC, Minister of Commerce and Industry;

Mr. Jules CAMBON, Ambassador of France;

Mr. Georges Maurice PALÉOLOGUE, Ambassador of France, Secretary-General of the Ministry of Foreign Affairs;

HIS MAJESTY THE KING OF ITALY:

Count Lelio Bonin Lelio LONGARE, Senator of the Kingdom, Ambassador Extraordinary and Plenipotentiary of H.M. the King of Italy at Paris;

HIS MAJESTY THE EMPEROR OF JAPAN:

Viscount CHINDA, Ambassador Extraordinary and Plenipotentiary of H.M. the Emperor of Japan at London;

Mr. K. MATSUI, Ambassador Extraordinary and Plenipotentiary of H.M. the Emperor of Japan at Paris;

HIS MAJESTY THE KING OF THE HELLENES:

Mr. Eleftherios K. VENISÉLOS, President of the Council of Ministers;

Mr. Athos ROMANOS, Envoy Extraordinary and Minister Plenipotentiary of H.M. the King of the Hellenes at Paris;

Who, after having communicated their full powers, found in good and due form, have agreed as follows:

France and Great Britain hereby renounce, so far as they are concerned, the special rights of supervision and control devolving upon them in relation

to Greece under the Treaty of London of May 7, 1832, under the Treaty of London of November 14, 1863, and, as regards the Ionian Islands, under the Treaty of London of March 29, 1864.

France and Great Britain, recognizing that under the present treaty Greece undertakes obligations for the maintenance of religious liberties which are placed under the guarantee of the League of Nations, hereby renounce, so far as they are concerned, the rights conferred upon them by the Protocol No. 3 of the Conference of London of February 3, 1830, to ensure the protection of religious liberties.

CHAPTER I

ARTICLE 1

Greece undertakes that the stipulations contained in Articles 2 to 8 of this chapter shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

ARTICLE 2

Greece undertakes to assure full and complete protection of life and liberty to all inhabitants of Greece without distinction of birth, nationality, language, race or religion.

All inhabitants of Greece shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

ARTICLE 3

Greece admits and declares to be Greek nationals *ipso facto* and without the requirement of any formality Bulgarian or Turkish (or Albanian) nationals habitually resident at the date of the coming into force of the present treaty in territories transferred to Greece by treaties subsequent to January 1, 1913.

Nevertheless, the persons referred to above who are over eighteen years of age will be entitled under the conditions contained in the said treaties to opt for any other nationality which may be open to them. Option by a husband will cover his wife and option by parents will cover their children under eighteen years of age.

Persons who have exercised the above right to opt must, except where it is otherwise provided in the said treaties, transfer within the succeeding twelve months their place of residence to the state for which they have opted. They will be entitled to retain their immovable property in Greek territory. They may carry with them their movable property of every

description. No export duties may be imposed upon them in connection with the removal of such property.

ARTICLE 4

Greece admits and declares to be Greek nationals *ipso facto* and without the requirement of any formality persons of Bulgarian or Turkish nationality who were born in the territories referred to in Article 3 of parents habitually resident there, even if at the date of the coming into force of the present treaty they are not themselves habitually resident there.

Nevertheless, within two years from the coming into force of the present treaty these persons may make a declaration before the competent Greek authorities in the country in which they are resident stating that they abandon Greek nationality, and they will then cease to be considered as Greek nationals. In this connection a declaration by a husband will cover his wife, and a declaration by parents will cover their children under eighteen years of age.

ARTICLE 5

Greece undertakes to put no hindrance in the way of the exercise of the right which the persons concerned have, under the treaties referred to in Article 3, to choose whether or not they will acquire Greek nationality.

ARTICLE 6

All persons born in Greek territory who are not born nationals of another state shall *ipso facto* become Greek nationals.

ARTICLE 7

All Greek nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

In particular Greece undertakes to put into force within three years from the coming into force of the present treaty an electoral system giving due consideration to the rights of racial minorities. This disposition is applicable only to the new territories acquired by Greece since August 1, 1914.

Differences of religion, creed or confession shall not prejudice any Greek national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honors, or the exercise of professions and industries.

No restriction shall be imposed on the free use by any Greek national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

Notwithstanding any establishment by the Greek Government of an official language, adequate facilities shall be given to Greek nationals of

non-Greek speech for the use of their language, either orally or in writing, before the courts.

ARTICLE 8

Greek nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Greek nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

ARTICLE 9

Greece will provide in the public educational system in towns and districts in which a considerable proportion of Greek nationals of other than Greek speech are resident adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Greek nationals through the medium of their own language. This provision shall not prevent the Greek Government from making the teaching of the Greek language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Greek nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the state, municipal or other budgets for educational, religious or charitable purposes.

The provisions of this article apply only to the territories transferred to Greece since January 1, 1913.

ARTICLE 10

In towns and districts where there is resident a considerable proportion of Greek nationals of the Jewish religion, the Greek Government agrees that these Jews shall not be compelled to perform any act which constitutes a violation of their Sabbath, and that they shall not be placed under any disability by reason of their refusal to attend the courts of law or to perform any legal business on their Sabbath. This provision however shall not exempt Jews from such obligations as shall be imposed upon all other Greek nationals for the necessary purposes of military service, national defence or the preservation of public order.

ARTICLE 11

For a period of six months after the coming into force of the present treaty Greece undertakes not to introduce any new regulations modifying the land system in the territories acquired by Greece under the treaties terminating the war of 1914-1919.

ARTICLE 12

Greece agrees to accord to the communities of the Valachs of Pindus local autonomy, under the control of the Greek State, in regard to religious, charitable or scholastic matters.

ARTICLE 13

Greece undertakes to recognize and maintain the traditional rights and liberties enjoyed by the non-Greek monastic communities of Mount Athos under Article 62 of the Treaty of Berlin of July 13, 1878.

ARTICLE 14

Greece agrees to take all necessary measures in relation to Moslems to enable questions of family law and personal status to be regulated in accordance with Moslem usage.

Greece undertakes to afford protection to the mosques, cemeteries and other Moslem religious establishments. Full recognition and all facilities shall be assured to pious foundations (*wakfs*) and Moslem religious and charitable establishments now existing, and Greece shall not refuse to the creation of new religious and charitable establishments any of the necessary facilities guaranteed to other private establishments of this nature.

ARTICLE 15

Greece undertakes within a period of one year from the coming into force of the present treaty to submit, for the approval of the Council of the League of Nations, a scheme of organization for the town of Adrianople. This scheme will include a municipal council in which the different racial elements habitually resident in the town will be represented. The Moslems will have the right of participation in executive functions.

Greece agrees that the buildings set apart for Moslem worship in the town of Adrianople shall be declared inalienable in perpetuity, and that not even reasons of public utility may be adduced for departing from this principle.

ARTICLE 16

Greece agrees that the stipulations of the foregoing articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these articles which is in due form assented to by a majority of the Council of the League of Nations.

Greece agrees that any member of the Council of the League of Nations

shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

Greece further agrees that any difference of opinion as to questions of law or fact arising out of these articles between the Greek Government and any one of the Principal Allied or Associated Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Greek Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

CHAPTER II

ARTICLE 17

Greece undertakes to make no treaty, convention or arrangement and to take no other action which will prevent her from joining in any general convention for the equitable treatment of the commerce of other states that may be concluded under the auspices of the League of Nations within five years from the coming into force of the present treaty.

Greece also undertakes to extend to all the Allied and Associated Powers any favors or privileges in customs matters which she may grant during the same period of five years to any state with which since August, 1914, the Allied and Associated Powers have been at war, or to any state which in virtue of Article 222 of the Treaty of Peace with Austria has special customs arrangements with such states.

ARTICLE 18

Pending the conclusion of the general convention referred to above, Greece undertakes to treat on the same footing as national vessels or vessels of the most favored nation the vessels of all the Allied and Associated Powers who accord similar treatment to Greek vessels.

As an exception to this provision, the right of Greece or of any other Allied or Associated Power to confine her maritime coasting trade to national vessels is expressly reserved.

ARTICLE 19

Pending the conclusion under the auspices of the League of Nations of a general convention to secure and maintain freedom of communications

and of transit, Greece undertakes to accord freedom of transit to persons, goods, vessels, carriages, wagons and mails in transit to or from any Allied or Associated State over Greek territory, including territorial waters, and to treat them at least as favorably as the persons, goods, vessels, carriages, wagons and mails respectively of Greek or of any other more favored nationality, origin, importation or ownership, as regards facilities, charges, restrictions and all other matters.

All charges imposed in Greece on such traffic in transit shall be reasonable, having regard to the conditions of the traffic. Goods in transit shall be exempt from all customs or other duties.

Tariffs for transit traffic across Greece and tariffs between Greece and any Allied or Associated Power involving through tickets or waybills shall be established at the request of the Allied or Associated Power concerned.

Freedom of transit will extend to postal, telegraphic and telephonic services.

Provided that no Allied or Associated Power can claim the benefit of these provisions on behalf of any part of its territory in which reciprocal treatment is not accorded in respect of the same subject-matter.

If within a period of five years from the coming into force of the present treaty no general convention as aforesaid shall have been concluded under the auspices of the League of Nations, Greece shall be at liberty at any time thereafter to give twelve months notice to the Secretary-General of the League of Nations to terminate the obligations of the present article.

ARTICLE 20

All rights and privileges accorded by the foregoing articles to the Allied and Associated Powers shall be accorded equally to all states, members of the League of Nations.

The present treaty, in French, in English and in Italian, of which in case of divergence the French text shall prevail, shall be ratified. It shall come into force at the same time as the treaty finally regulating the status of Thrace, as provided in Article 48 of the Treaty of Peace with Bulgaria.

The deposit of ratifications shall be made at Paris.

Powers of which the seat of the Government is outside Europe will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris that their ratification has been given; in that case they must transmit the instrument of ratification as soon as possible.

A procès-verbal of the deposit of ratifications will be drawn up.

The French Government will transmit to all the signatory Powers a certified copy of the procès-verbal of the deposit of ratifications.

In faith whereof the above-named plenipotentiaries have signed the present treaty.

Done at Sèvres, the tenth day of August one thousand nine hundred and twenty, in a single copy which will remain deposited in the archives of the French Republic, and of which authenticated copies will be transmitted to each of the signatory Powers.

(L.S.)	DERBY.
(L.S.)	GEORGE H. PERLEY.
(L.S.)	ANDREW FISHER.
(L.S.)	JAMES ALLEN.
(L.S.)	R. A. BLANKENBERG.
(L.S.)	ARTHUR HIRTZEL.
(L.S.)	A. MILLERAND.
(L.S.)	F. FRANÇOIS-MARSAL.
(L.S.)	JULES CAMBON.
(L.S.)	PALÉOLOGUE.
(L.S.)	BONIN.
(L.S.)	K. MATSUI.
(L.S.)	E. K. VENIZELOS.
(L.S.)	A. ROMANOS.

PROTOCOL BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF
HAITI FOR THE ESTABLISHMENT OF A CLAIMS COMMISSION ¹

Signed at Port-au-Prince, October 3, 1919.

ARTICLE I.

In pursuance of the objects of the treaty concluded September 16, 1915, between the United States of America and the Republic of Haiti to establish the finances of Haiti on a firm and solid basis, the Government of the United States and the Government of Haiti, through duly authorized representatives, agree upon this protocol for the purpose of carrying out the objects of the aforesaid treaty and of giving effect to Article 12 thereof. It is clearly understood that this protocol does not in fact or by implication extend the provisions of the treaty of September 16, 1915, hereinbefore mentioned.

ARTICLE II.

Since the settlement by arbitration or otherwise of all pending pecuniary claims of foreign corporations, companies, citizens or subjects against Haiti, makes it necessary to assemble, analyze and adjust such claims, the Government of Haiti agrees to constitute forthwith a claims commission of three members, one member to be nominated by the Secretary of State for

¹ U. S. Treaty Series, No. 643.

Finance of Haiti; one member to be nominated by the Secretary of State of the United States, and the third member, who shall not be a citizen either of Haiti or of the United States, to be nominated by the Financial Adviser, the three members so nominated to be appointed by the Government of Haiti.

In case a vacancy occurs in the office of any member by reason of his disability or for any other cause, a new member shall be nominated and appointed in the same manner as was the former incumbent.

ARTICLE III.

The claims commission shall have jurisdiction to examine and pass upon all pecuniary claims against Haiti. It is understood, however, that the commission shall not have jurisdiction to consider or pass upon:

(1) The indebtedness represented by the three bond issues of 1875, 1896 and 1910, now outstanding;

(2) That to the Banque Nationale de la République d'Haïti, as of December 31, 1916, as acknowledged by the Haytian Government on the 12th of April, 1919;

(3) The sum due as interest, as this sum will have been verified and admitted by the Financial Adviser, upon the bonds of the Compagnie Nationale des Chemins de Fer d'Haïti, duly authorized and bearing the guarantee of the Haytian Government, to the amount of \$3,544,548.74; and

(4) So much of the sum due to the Compagnie des Chemins de Fer de la Plaine du Cul-de-Sac on account of the interest guarantee upon its bonds as has not hitherto been in dispute between the railroad and the Haytian Government, the government having recognized its obligation to pay to the Compagnie des Chemins de Fer de la Plaine du Cul-de-Sac a sum equal to \$41,280 per annum, less the net profits of the railroad.

It is further understood that the claims heretofore presented to the claims commission appointed by the decree of November four, nineteen sixteen, need not be presented de novo to the new claims commission who will review the findings of the commission appointed by the decree of November four, nineteen sixteen, in respect of these claims, may require the production of further evidence where they deem this necessary and shall make such final awards as seem to them just and equitable.

ARTICLE IV.

The claims commission shall proceed, as soon as constituted, to hold meetings at Port-au-Prince, or elsewhere in the Republic of Haiti, to formulate rules of procedure for the filing and adjudication of claims.

The claims commission may fix the date after which claims may not be filed, but such date shall not be less than six months after the date of the first public announcement by the commission of its readiness to receive claims. The commission shall be bound to examine and decide upon every

claim within two years from the day of its first meeting. A majority vote of the commissioners shall constitute a binding decision upon any claim.

ARTICLE V.

The claims commission shall determine the proportion of each award which is to be paid in cash and the proportion to be paid in bonds of Haiti; and it shall state these amounts respectively in its certificate of award which is to be issued to each creditor in whose favor an award is made, and which is to be surrendered by him to the Secretary of State for Finance upon payment of the award.

ARTICLE VI.

In order to make possible the settlement of the awards rendered by the claims commission and the refunding of those obligations specifically mentioned in Numbers 1, 2, 3, and 4 in Article III above, and otherwise to establish the finances of Haiti on a firm and solid basis, the Republic of Haiti agrees to issue, upon the terms and at a time to be fixed in accord with the Financial Adviser, but not later than two years after the date of the signature of this protocol a national loan of 40,000,000 dollars gold (\$40,000,000), payable in thirty years by annual drawings at par, or by purchase below par in the open market. It is agreed that the Government of Haiti shall have the right to pay off the entire loan at any time upon reasonable previous notice after fifteen years from the date of issue.

ARTICLE VII.

It is further agreed that this loan, to the issuance of which the President of the United States consents, will be used to pay or otherwise provide for the obligations specifically mentioned and numbered 1, 2, 3 and 4 in Article III hereof, and also the awards rendered by the claims commission provided for herein. Provision shall be made for the exchange of the bonds of this loan for the bonds of the issues of 1875, 1896 and 1910, such exchange to take place with due regard for the interest rates of the respective bonds and to be carried on between the Secretary of State for Finance of the Republic of Haiti, in accord with the Financial Adviser, and such agency as may represent the holders of said bonds. After two years from the date of the official announcement of the beginning of the conversion the bonds of this loan not used for the purpose of conversion shall be returned to the Secretary of State for Finance of Haiti at Port-au-Prince for the use of the government. The holders of any said old bonds which shall not have been presented for exchange within this period of two years shall apply for redemption of the same directly to the Secretary of State for Finance of Haiti. Any surplus remaining after the foreign and domestic indebtedness has been paid or otherwise provided for shall be applied by the Republic of Haiti, in accord with the Financial Adviser, to the construc-

tion of necessary public works or to the service of the loan hereinabove authorized.

ARTICLE VIII.

It is agreed that the payment of interest and the amortization of this loan will constitute a first charge upon all the internal revenues of Haiti, and a second charge upon the customs revenues of Haiti next in order, until the expiration of the treaty of September 16, 1915, after payment of salaries, allowances and expenses of the General Receiver and the Financial Adviser and their assistants; and it is further agreed that the control by an officer or officers duly appointed by the President of Haiti, upon nomination by the President of the United States, of the collection and allocation of the hypothecated revenues, will be provided for during the life of the loan after the expiration of the aforesaid treaty so as to make certain that adequate provision be made for the amortization and interest of the loan.

ARTICLE IX.

Each member of the claims commission will receive \$8,000 gold per annum as salary, and \$2,000 gold per annum as expenses; and the commission is authorized, after approval of the Secretary of State for Finance in accord with the Financial Adviser, to retain the services of such assistants and experts and otherwise to incur such actual and necessary expenses as may be required for the proper discharge of its duties; and it is agreed that upon proper certification by the Secretary of State for Finance, such salaries, allowances and expenses thus authorized will be paid from the General Treasury of the Republic.

ARTICLE X.

The Government of Haiti agrees to empower the commission by appropriate legislation or otherwise to compel the attendance at its sessions in Haiti of witnesses whose testimony is desired in connection with any claim pending before the commission, and to require the production of papers which the commission may deem necessary for it to consider. The Government of Haiti further agrees to enact such legislation as may be necessary to give effect to the provisions of this protocol.

ARTICLE XI.

This protocol will take effect immediately upon signature by the Minister of the United States to Haiti representing the Government of the United States, and by the Secretary of State for Foreign Affairs of Haiti representing the Government of Haiti.

In witness whereof this agreement has been signed and sealed by Mr. Arthur Bailly-Blanchard, Envoy Extraordinary and Minister Plenipotentiary of the United States of America on behalf of the United States, and

by Mr. Constantin Benoit, Secretary of State for Foreign Affairs of Haiti on behalf of the Republic of Haiti.

Done in duplicate in the English and French languages at the city of Port-au-Prince on the third day of October, one thousand nine hundred and nineteen.

[SEAL.] A. BAILLY-BLANCHARD.
[SEAL.] C. BENOIT.

TREATY BETWEEN ITALY AND THE KINGDOM OF THE SERBS, CROATS
AND SLOVENES¹

Signed at Rapallo, November 12, 1920

The Kingdom of Italy and the Kingdom of the Serbs, Croats and Slovenes, desiring to establish between themselves a state of sincere friendship and cordial relations for the common good of the two peoples; the Kingdom of Italy, recognizing in the constitution of the neighboring States the consummation of one of the loftiest purposes of the war sustained by it; His Majesty the King of Italy has named as his plenipotentiaries: Chevalier Giovanni Giolitti, President of the Council of Ministers and Minister of the Interior; Count Carlo Sforza, Minister of Foreign Affairs; Professor Ivanoe Bonomi, Minister of War;

His Majesty the King of the Serbs, Croats and Slovenes has named as his plenipotentiaries: M. Milenko R. Vesnitch, President of the Council of Ministers; Dr. Ante Trumbic, Minister of Foreign Affairs; M. Costastojanovic, Minister of Finance;

Who, having exchanged their full powers, which have been recognized as being valid, have agreed as follows:

The Boundaries of Istria

Art. I. Between the Kingdom of Italy and the Kingdom of the Serbs, Croats and Slovenes the following boundaries are established:

From the Pec mountain (point 1511), common to the three boundaries of Italy, Austria and the Kingdom of the Serbs, Croats and Slovenes, as far as the Jalovez mountain (point 2643) a line to be determined on the spot with a general direction of north and south, which passes through point 2277 (Ponca).

From the Jalovez mountain (point 2643) a line which follows the watershed between the basin of the Sava da Wurzen as far as the Tricorno mountain (Triglav point 2863), thence the watershed between the basin

¹ Translated from *Il Messaggero*, Rome, November 13, 1920.

of the Isonzo and that of the Sava da Wochein (Bohiny) to the north-easterly side of the Mosic mountain (point 1602), touching point 2348 of the Vogel, 2003 of the Lavsevic, 2086 of the Kuk.

From the northeasterly side of the Mosic mountain to the easterly side of the Porzen mountain (point 1631) a line to be determined on the spot with the general direction of north and south.

From the easterly side of the Porzen mountain (point 1631) to the easterly side of the Blegos mountain (point 1562) a line to be determined on the spot with a general direction of west and east, leaving the hamlet of Dautscha to the Kingdom of the Serbs, Croats and Slovenes, and that of Novaka to Italy.

From the easterly side of the Blegos mountain (point 1562) to the easterly side of the Bevk mountain (point 1050) a line to be determined on the spot with a general direction of northeast, southwest, leaving the hamlets of Loskovza, Kopaonica and Zaveden to the Kingdom of the Serbs, Croats and Slovenes, and the two passes of Podlanischam to Italy.

From the easterly side of the Bevk mountain (point 1050) to a point directly west of the hamlet of Hotedrazica, a line to be determined on the spot which leaves the hamlets of Javerjudol, Ziri, Opale, Hlevische, Rvto, Hotedrazica, to the Kingdom of the Serbs, Croats and Slovenes; the Prapretni mountain (point 1006) and the hamlets of Bresnike, Vrednik, Zavratac, Madwedjeberdo to Italy. Thence to the hamlet of Zelse a line which at first follows to the west the ditch adjacent to the highway of Hotedrazica Planina, leaving the hamlets of Planina, Unek, Zelse and Radek to the Kingdom of the Serbs, Croats and Slovenes. From the hamlet of Zelse to Cabranska a line to be determined on the spot with a general direction of northwest, southeast, which at first follows the easterly slope of the Pomario mountain (Javornik point 1268), leaving the hamlets of Dolenia, Vas, Dolenje, Jezero and Otok to the Kingdom of the Serbs, Croats and Slovenes, and the peaks of point 875, point 985, point 963 to Italy. Thence on the easterly slope of the Bicka Gora (point 1236) and of the Pleka Gora (point 1067), leaving to Italy the hamlet of Lescova Dolina and the Bivi road of point 912 west of Skodnik, and of point 1146 east of Cifri (point 1399), it meets Cabranska, which will remain in the territory of Italy, together with the highway running along the easterly slope of the Nevosc mountain of Lescova Dolina to Cabranska.

From Cabranska to Griza (point 502) a line to be determined on the spot with a general direction of northeast, southwest, which passes to the east of the Trestenico mountain (Trestenek point 1243), touches point 817 south of Suhova, passes south of Zidovje (point 660), thence east of Griza (point 502), leaving the hamlets of Clana and of Bresa to Italy and that of Studena to the Kingdom of the Serbs, Croats and Slovenes.

From Griza (point 502) to the boundaries of the State of Fiume, a line to be determined on the spot which has the general direction of north and

south, to meet the road Rupa Castua, about half-way between Jussici and Spincici; thereupon it cuts the said road, embracing to the west the hamlets of Miseri and Trinaitici, which remain in the possession of the Kingdom of the Serbs, Croats and Slovenes; it meets the road Mattuglie Castua above the meeting of the cross-roads east of Mattuglie; thence it meets at the road Fiume Castua the northern boundaries of the Free State of Fiume and exactly at the northernmost point of the hamlet of Rubesi (the point of intersection of the road Croce di Tomaticci, about 500 meters south of the point of intersection of the three roads west of Castua). As long as the regular recorded roads have not been systematized in Italian territory, the use of the aforementioned roads and of the turnpike of the three roads west of Castua will remain in full and free use both for the Kingdom of Italy and for the State of Fiume.

Italian Sovereignty Over Zara

Art. II. Zara and the territory described below are recognized as forming a part of the Kingdom of Italy.

The territory of Zara of Italian sovereignty comprises the city and the taxable commune of Zara and the taxable communes (subdivisions) of Borgo Erizzo Cerno, Boccagnazza, and that part of the taxable commune (subdivision of Dielo) determined by a line which, starting from the sea about 700 meters southeast of the village of Dielo, runs in a straight northeasterly line to point 66 (Gruz).

A special convention will regulate matters pertaining to the execution of this article, with regard to the commune of Zara and its relations to the district and province of Dalmatia, and will regulate the reciprocal relations between the territory assigned to the Kingdom of Italy and the rest of the territory hitherto forming a part of the same commune, district and province, belonging to the Kingdom of the Serbs, Croats and Slovenes, including the equitable partition of the provincial and communal property and the archives relating thereto.

Art. III. Furthermore, there are recognized as forming a part of the Kingdom of Italy the islands of Cherzo and Lussin, with the smaller islands and the sand-banks included in the respective juridical districts, also the smaller islands and the sand-banks included in the administrative boundaries of the province of Istria, in so far as they were given to Italy by the above provisions, and the islands Lagosta and Pelagosa with the adjacent islets.

All the other islands which belonged to the former Austro-Hungarian monarchy are recognized as forming a part of the Kingdom of the Serbs, Croats and Slovenes.

The Free State of Fiume

Art. IV. The Kingdom of Italy and the Kingdom of the Serbs, Croats and Slovenes recognize the full liberty and independence of the State of

Fiume and bind themselves to respect it at all times. The State of Fiume is constituted:

(a) Of the "corpus separatum" which is at present bounded by the frontiers of the City and District of Fiume.

(b) Of a tract of land, formerly belonging to Istria, bounded as follows:

In the north: by a line to be determined on the spot which, starting due south of the hamlet of Castua, meets on the road S. Mattia Fiume the boundary of the "corpus separatum," leaving the inhabitants of Serdoci north of Nosti to the Kingdom of the Serbs, Croats and Slovenes, and leaving the whole road which, north of the railroad through Mattuglie and at the intersection of the three roads of point 377 west of Castua, leads to Rupa, to the State of Fiume;

In the west: by a line which from Mattuglie descends to the sea at Proluca, leaving the railway station and the locality of Mattuglie in Italian territory.

With Regard to the Delimitation of the Boundaries

Art. V. The boundaries of the territories mentioned in the preceding articles shall be traced on the spot by boundary commissioners, composed one-half of delegates of the Kingdom of Italy, and one-half of delegates of the Kingdom of the Serbs, Croats and Slovenes. In case of disagreement, the President of the Swiss Confederation shall be invited to act as arbiter and his decision shall be final.

For the sake of clearness and greater precision, there is annexed to the present treaty a map of a scale of 200,000, on which the direction of the boundaries as mentioned in Arts. I and IV is given.

Art. VI. The Kingdom of Italy and the Kingdom of the Serbs, Croats and Slovenes will call together a conference composed of experts and competent persons of the two countries within two months from the going into force of the present treaty. The said conference shall, within the shortest possible time, make to the two governments precise proposals upon all the questions tending to establish the most cordial, economic and financial relations between the two countries.

The Protection of Italians in Dalmatia

Art. VII. The Kingdom of the Serbs, Croats and Slovenes declares that it recognizes the following principles in favor of Italian citizens and Italian interests in Dalmatia:

(1) The concessions of an economic character made by the Government and the public corporations of the States to which the Kingdom of the Serbs, Croats and Slovenes has succeeded, to Italian societies and citizens, and those possessed by virtue of legal titles of concessions up to November 12, 1920, are fully respected, the Government of the Kingdom

of the Serbs, Croats and Slovenes undertaking to maintain all the obligations assumed by previous governments.

(2) The Kingdom of the Serbs, Croats and Slovenes agrees that Italians domiciled up to November 3, 1918, in the territory of the former Austro-Hungarian Monarchy, which by virtue of the treaties of peace with Austria and Hungary, and by virtue of the present treaty, is recognized as forming a part of the Kingdom of the Serbs, Croats and Slovenes, shall have the right of electing to be Italian citizens within one year from the going into force of the present treaty, and they are freed from the obligation of transferring their domicile outside of the territory of the aforementioned kingdom. They shall preserve the free use of their own language and the free exercise of their own religion, with all the advantages inherent in this freedom;

(3) The degree of doctor and other university titles formerly attained by citizens of the Kingdom of the Serbs, Croats and Slovenes in universities and other institutions of advanced studies of the Kingdom of Italy, shall be recognized by the Government of the Serbs, Croats and Slovenes as valid in its territory, and they shall confer professional rights equal to those derived from the doctorate and from titles obtained from the higher universities in the Kingdom of the Serbs, Croats and Slovenes.

Questions pertaining to the validity of advanced studies which have been pursued by the aforementioned Italians in the Kingdom of the Serbs, Croats and Slovenes, and by the aforementioned citizens of the Kingdom of the Serbs, Croats and Slovenes in Italy, shall form the subject of a later agreement.

Art. VIII. In the interest of good intellectual and moral relations between the two peoples, the two governments shall conclude as soon as possible a convention which shall have the purpose of intensifying the intimate reciprocal development of cultural relations between the two countries.

Art. IX. The present treaty is drawn up in two copies: one in Italian and one in Serbo-Croatian.

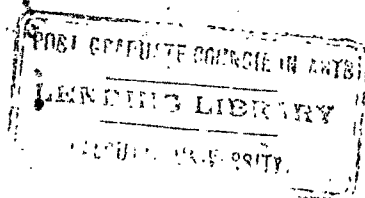
In case of disagreement, the Italian shall be the deciding one, as being the language known to all the plenipotentiaries.

In faith whereof, the aforementioned plenipotentiaries have set their hands to the present treaty.

Done at Rapallo, November 12, 1920.

Signed: GIOVANNI GIOLITTI, CARLO SFORZA, IVANOE BONOMI, MILENKO R. VESNITCH, ANTE TRUMBIC, COSTA STOIANOVITCH.

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THE NATURE AND SOURCES OF INTERNATIONAL LAW

By GORDON E. SHERMAN

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Yale University*

Not the least among the many problems of reconstruction facing civilization at the present moment is the establishment upon a secure basis of the principles of international law as a system of world conduct and protection. Of actually restraining principles, indeed, the late war has exhibited few; nor have these, so far as successfully asserted, prevented violations of neutral rights upon a vast scale, together with a similar disregard of privileges heretofore universally conceded to occupied territory; while still more appalling has been the exploitation of diplomatic immunity in the interest of treacherous propaganda, and the wholesale assassination of noncombatants on the high seas. To such action, the words in which Germanicus is represented by Tacitus as addressing his licentious soldiery may well be applied: "We have violated even rights accorded to enemies, as also the sanctity of embassy and the consecrated obligations of usage between peoples."¹

Does a system of justice in international action, then, really exist? And has it enforceable sanctions? Again, though such existence be conceded, does the system not assert claims too lofty for successful maintenance against those not willing to recognize them? Or do the traits shown in the origin and development of this system warrant confidence in its future as a working-force once the world shall have regained a semblance of moral and political order? Difficult as such questions may be to answer at the moment, they must, nevertheless, be fairly met by all who would see international relations placed upon a basis assured both in fact and in law. The aim of the present article will be to ascertain the true origin of modes of juristic thought international in character, as contrasted with a national consciousness confined to its own welfare and conduct and indifferent to the claims of all foreign to its borders.

It would seem to be beyond contestation that the nature of the sources whence conceptions truly international may be found to have been derived will prove our best guide in endeavoring to estimate the claims of international law at the present moment and the hopes of its future usefulness to the world. International law can indeed point to an origin and history

¹ Hostium quoque jus et sacra legationis et fas gentium rupisti. *Annals*, I, 42, 4.

whose features logically demand that the future shall follow the leading of the past; and this is well, for were it the world's task to now initiate a wholly new order of thought and action adequate to control the intercourse of nations, the burden would be heavy, indeed.

Happily, however, such is not the case. For it is not a new creation that is required, but rather the partial reshaping of an existing science in the light of its own imprescriptible standards. The course of history in this field is clear, and not to be mistaken. Nor is the attitude which the subject claims at our hands essentially divergent from that imposed upon himself by Grotius when, as an exile, he undertook, during the desolating conflicts of the Thirty Years' War, to coördinate a system of international regulation fitted not merely for a state of war but as a guide in time of peace as well. "Such a work," says he, "is the more necessary since there are not now, nor have there been found wanting in the past, those who condemn this aspect of law and declare that it exists in name alone, nor is anything more familiar than the opposition of law and arms." Citing many classical passages in illustration of this, Grotius singles out Tertullian as a *Christian* author who but reflects the tendencies of his time. "Tertullian himself would not hesitate to declare deceit, cruelty and injustice to be the appropriate affair of battles." "But," concludes Grotius, "since all discussion of law is of no avail, if there is, in fact, no law, our labors will be at once commended if we briefly repel so grave an error. There is, nevertheless, a common law between nations touching war and its conduct." Nevertheless, Grotius now sees throughout the Christian world a license in war shameful to even barbarous peoples. "The sight of this excess," says he, "has led many men to think that arms should be forbidden to the Christian, although such a course would prove quite as objectionable as would the terrors of combat."

Hence the task is undertaken by him, and he proposes at the outset to distinguish (a) law expressly *instituted* from (b) the law of nature, this latter being ever the same, but the former being necessarily subject to change by human will. Finally, he tells us he intends to appeal touching natural law to the testimonies of philosophers, historians, poets and orators; among philosophers he accords the first place to Aristotle.²

Following the paths indicated by Grotius, the inquirer of to-day will turn in the first instance to the classical authors of Greece and Rome. Here law as defined by Aristotle³ falls into two chief classes: (a) the law of a particular state, that is to say, law ordered or acknowledged by the state and which would comprise statute law and law customary or unwritten; and (b) law general in its application, or the law of the natural order of things. Again, Aristotle divides political justice into natural and legal, the former being the law of nature, the demand of natural

² *De Jure Belli ac Pacis*, I, IX, 2, and *Prolegomena*, 3, 4, 5, 28, 29.

³ *Rhetoric*, I, 13, 2.

reason and unalterable, whereas the latter is instituted by man. And he concludes that every *principle* in law and custom stands in the relation of a universal to a particular,—“the things done are many, but the *principle* is singular and *universal*.”⁴

The conception of natural law as the law of the eternal order meets us in Hesiod where it is “the law ordered for men by the son of Kronos”;⁵ again, it is the law by which immortals and mortals are alike guided,—“the sacred spirit of Justice placed among the stars.”⁶ It is the Divine Will with which Socrates tells Hippias all earthly regulation must harmonize.⁷

These conceptions evidence a course of thought which, when in time transplanted to Rome through study of the Stoic philosophy, was destined to impress upon the practical Roman mind influences far-reaching in their results. The *universal* element in law becomes combined with a sense of equity in the private relations of life innate in the Roman mind, and also of public faith as witnessed in formal aspects of the initiation, the conduct, or cessation, of hostilities and the negotiation and maintenance of treaties. And there is thus reached a mode of thought from which the concept of a law not merely general and world-wide, but *international*, may be said to have sprung. Such a concept may well be deemed the efficient agent moulding an apprehension of universal world-relationship into an element of political cognition, and at the same time making it the foundation stone of a legal system fitted to exhibit coördinated rules controlling the mutual relations of states. This is Rome’s best legacy to the modern world, and attests a beginning of public thought truly international.

To ascertain the sources of a system of legal institutions it becomes essential to grasp not merely the guiding principles whence these institutions may have sprung, but we must also picture the phases or moods shown in successive transformations whose results will thus exhibit an organic group logically evolved from the past. With these ends in view, we proceed to glance briefly at certain characteristics of the law of early Rome.

Law (*jus civile*) is primarily ancient Roman custom crystallized upon the bronze of the XII Tables and whose foundation is *consuetudo* or *mos*, i.e., the usages of *gentes* whose clan-members form the city-state: *consuetudine autem ius esse putatur id, quod voluntate omnium sine lege vetustas comprobarit*.⁸ Supplementing the XII Tables is *lex*, which designates provisions approved by the citizens in assembly (*lex curiata*, *lex centuriata* later *plebiscita*) on a magistrate’s proposal (*rogatio*). None but the *citizen*, however, might claim the law’s protection, save under treaty-provisions, although the alien is amenable to the sanctions of *penal* juris-

⁴ Ethics, 5, 7, 1, 1134b, 13, and 1135a.

⁶ Orphic Hymn, No. 63, 1.

⁵ Works and Days, 276.

⁷ Xenophon, *Memorabilia*, 4, 4, 19.

⁸ Cicero, *De Inventione*, 2, 22.

prudence. The *peregrinus* is an alien friend enjoying protection in virtue of a treaty (*fœdus*), and so within the guardianship of Roman *pax*.⁹

In addition to *consuetudo* and *lex*, there exist as definite law-sources *interpretatio*, that is to say, construction and comment on the part of *jurisprudentes*, and the *edicta* of the magistrate (*prætor*, *ædile*). For while the ancient code offers a presentation of law apparently immovable, it is nevertheless not in the mind of the people that its law shall maintain absolute rigidity. A code necessarily exhibits law as it is in the present and with possible suggestions of its historical evolution. But law must respond to the changing needs of a people, and in recognition of this principle it is to jurists and magistrates that at Rome the slow remoulding of substantive and procedural law is of necessity chiefly committed, in spite of the competence of the people in assembly to exercise their power of law-making—a power seldom, in fact, at Rome, brought into action. Hence the importance of the jurisconsult's labors accorded him a place scarcely inferior to that of the magistrate, though the latter is invested with *jurisdictio* and *imperium*. Cicero terms the jurisconsult "*totius oraculum civitatis*."¹⁰

In the early centuries of Roman history both knowledge and exposition of law is in the hands of the pontifices, and these alone are familiar with the practical rules governing suits. According to the tradition preserved by Livy (IX, 46), Cn. Flavius succeeded in forcibly transferring the records of the city's law from the priestly caste and laying the entire system open to the light of day in order that all might become familiar with it: *civile jus, repositum in penetralibus pontificum, evulgavit fascesque circa forum in albo proposuit, ut, quando lege agi posset, sciretur*. The chief accomplishment of Flavius was in stripping mystery from those forms of action which constituted the most striking and difficult portion of the ancient Roman system, for it was the theory of the ancient law that the magistrate *presided* only at the outset and did not carry to a conclusion the actual proceedings in suits; these latter were supposed to be rigidly bound within prescribed forms (*Legis Actiones*), and if the responsibility attending their employment were relegated to the suitors, these would suffer the

⁹ "The treaty of friendship concluded between two city-states (*pax*, from *pango*) provides, in the first place, for a durable peace (*pax et æterna pax*—Cicero, Pro Balbo, 15, 35), and reciprocal recognition of the liberty and property of their citizens . . . and a declaration of the legal equality of the contracting cities. Such a treaty would provide for exchange of ambassadors lodged and paid by the city to whom they were sent. More important, however, in the Roman view, than the city's external relations was the regulation of inter-state rights of citizenship, for the non-citizen had no claim upon Roman law save under treaty. The term *hostis*, later *peregrinus*, signifies one protected by treaty: *Tum eo verbo dicebant peregrinum qui suis legibus uteretur*." Mommsen, *Droit Public Romain*, French translation, VI,² 214, 215; *Römisches Staatsrecht*, 31, p. 598.) The Romans never knew *international law* (VI. 216. Mommsen).

¹⁰ De Oratore, I, 45.

penalties attaching to ignorance and mistake. Since, then, all accurate knowledge of those indispensable formalities had been jealously maintained as the prerogative of a highly privileged class, the citizens at large remained practically dependent on that class for their knowledge of the procedure to be employed, and it was the abrogation of this dependence upon the pontifical college that enabled Roman law to begin a new development. From the exclusive competence of the pontiffs the knowledge of law and procedure was thus to pass to the jurists and the secular magistrates, and the process was to be marked by the institution of a new procedure known as the formulary system,—*Formula*. The essentially revolutionary accomplishment of Flavius, placed by Livy as in A. U. C. 450, *i.e.*, some three centuries before the Christian era, and which had reached the culmination of its effects not long before the age of Cicero, was destined to open a way to the broadening of private law and procedure, and to the recognition of principles deeply significant in the public and external life of Rome.

The Roman theory of legal process required a suit at law to be conducted under two successive aspects, known as *jus* and *judicium*; that is to say, the judicial function was not supposed to lie wholly within the hands of a single magistrate or bench of magistrates, but was divided between two individuals, or groups of individuals,—the *magistratus* and the *judex*. To the *magistratus* there was assigned the duty of so shaping the cause as to bring it to a point where its actual final determination might be confided to another hand, that is, to the *judex*, who was not a public official, but who was supposed to be advised by jurists, at the same time taking from the magistrate certain instructions as to the nature of the cause and the law to be applied. Under the earlier *régime* such instructions were oral, but in later days they assumed the shape of a formula or written presentation of the case which now passed from the stage *in jure* to that termed *in judicio*. Here there was in effect little more expected than a demand upon the magistrate for a *formula* and the granting or refusal of this on the magistrate's part. A suitor was himself expected to select the formula desired from among those contained on the magistrate's *album*, where was to be found a statement made at the beginning of his annual term of office of such general principles of law and procedure as might be expected to govern his administrations:—*Sunt jura, sunt formulæ de omnibus rebus constitutæ expressæ sunt publicæ a prætore formulæ ad quas privata lis accommodatur*.¹¹ It will be readily perceived that much depended on the magistrate's edict, as well as upon his construction of its provisions as evidenced in such *formulæ* as he might give out. It was, of course, expected that the magistrate would adhere in practice to both the letter and spirit of his edict. That Verres had signally failed in good faith touching these was one of Cicero's most serious accusations. The

¹¹ Cicero, *Pro Q. Roscio*, 8.

magistrate might be an *ædile* or *prætor*; after B.C. 242, one or more *prætors* were specially appointed *prætores peregrini* for suits between aliens or between citizens and aliens.

In addition to the *judex*, there were also *arbiters* whose hearing and determination of a cause came more properly within the moral than the legal sphere. To the arbiter's award there attached indeed no strictly legal sanction, yet it was scarcely less effective than that of the *judex*, since the stern conception of public faith on the part of early Rome tended to invest fiduciary acts with a sanction strongly supported by public opinion and the neglect of which might open serious consequences through wide powers conferred upon the *Censor*. An adverse finding by this official touching the acts of any citizen brought with it the infliction of *ignominia*, carrying with it possible exclusion from the Senate or from the most valued rights of citizenship. Gradually the functions of the *arbiter* and the *judex* came to be identified or similar in effect, and as the offices of both were supposed to require the aid of counsellors learned in the law, the sentences given would tend to be based on broadening principles of equity rather of slavish adherence to the letter of the law, both on the part of the magistrate, the *judex*, the arbiter, or the *recuperatores*, these latter forming a species of arbitral body for the decision chiefly of suits where aliens might be concerned under treaty provisions. Pliny tells us that he has often so acted: *frequenter egi, frequenter judicavi, frequenter in consilio fui*.¹²

On the part of the suitor, assistance was to be obtained from retained jurists, while, when the cause reached the *judex* or *arbiter*, it was possible to employ an *orator*, who was regarded as the patron (*patronus*) of his client (*cliens*), and it was also possible to call in the assistance of outside parties (*advocati*) were the cause of sufficient moment to warrant this. Proceedings were of the most public character; the magistrate sat in his *tribunal* in the Forum with his *consilium* and *scribæ* about him; the *judex* also sat in public with his *consilium*, and thus the Romans might readily become familiar with every changing phase of legal thought.

The theory of the edicts and of the formulary system presupposed that the magistrate would hold fast to applications of recognized *jus civile* as modified by its *interpretatio* at the hands of the jurists, and to such principles of customary law as were admitted an integral part of Roman jurisprudence. There existed here, plainly, a lawful opportunity for the magistrate's judgment to be guided by progressive as opposed to reactionary tendencies, and it was possible for him, aided by enlightened advice from his *consilium*, to indicate courses of action which, in the hands of the orator, might well invoke more theory than actual law,—more of the ideal than the practical. In the end there was forged a liberally-developed body of principles exhibiting a jurisprudence owing little to actual legislation, but the product of judicial, conciliatory or oratorical effort, and into which

¹² Epistolæ, I. 20.

there manifestly entered much that was of a lay rather than professional origin. It was, in truth, but an expansion of labors carried on through the early centuries in the *interpretatio* of the jurists as already noted. Many of the magistrates were themselves jurisconsults of great eminence and strengthened, moreover, by the counsel of learned *prudentes* whose influence would constantly work toward innovation and application of equitable counsels; the magistrate's *Albam* would be likewise indebted for both its letter and spirit to similar advice. Thus arose a new jurisprudence,—the *jus prætorium*. So Papinian tells us in Justinian's *Digest* (I, 1, 7, 1): *jus autem civile est, quod ex legibus, plebiscitis, senatusconsultis, decretis Principum auctoritate Prudentium venit.* § 1. *Jus prætorium est, quod Prætores introduxerunt, adjuvandi, vel supplendi, vel corrigendi juris civilis gratia, propter utilitatem publicam: quod & honorarium dicitur, ad honorem Prætorum sic nominatur.* And Marcian adds: *Nam et ipsum jus honorarium viva vox est juris civilis.* As time went on, the prætorian edict became, so to speak, standardized, that is to say, it assumed the form of a permanent annual announcement,—*edictum perpetuum*,—and the system begotten by it took equal rank with *jus civile*, constituting a source of law which, though later, was yet not actually inferior to the XII Tables. These edicts were not engraved upon bronze, but upon bleached wooden tablets and in black lettering, or, possibly, on papyrus or even on less permanent material. The edicts, both of *prætors* and *ædiles*, were placed in the Forum where they might be read of all: *apud forum palam, ubi de plano recte legi possitur.*

While we know little touching precise provisions of the edicts issued by the *prætores peregrini*, we may well suppose that these would contain provisions more or less influenced by the knowledge of foreign law and custom inevitably to be gathered from suits where foreigners were parties. It is certain that steps in the process of widening the ancient *jus civile* were taken by the city *prætor* at a very early period in Roman history, and in suits exclusively between citizens at the first¹³ and from thence tending to include, as commerce and civilization advanced, principles of broadened aim gradually developed in the daily and simple affairs of commercial life: *angustissimis finibus constitutum per legem duodecim tabularum jus præcipiendarum hereditatum prætor ex bono et æquo dilatavit.*¹⁴

When Cicero, closely studying Stoic philosophy and Grecian ideals, began the composition of his treatises on morals, philosophy, and law, the

¹³ It is important to bear in mind that the broadening of Roman legal thought along practical equitable lines proceeded in the first instance from within outward; there is no evidence whatever that the *prætor* first found equitable conceptions through comparison of alien usages brought before him by *peregrini*, and thus evolved a *jus gentium* on world-law as stated in practically all of our standard works on international jurisprudence. Such a course is in conflict with the genius of Roman legal development.

¹⁴ *Institutes*, III, 9, 2.

conception of a *jus naturale* had doubtless already become familiar to the scholarly class at Rome. It is nevertheless to Cicero that we are chiefly indebted for a knowledge of this conception as grasped by his fellow-students and eloquently expounded by himself both in the contests of legal practice and in the seclusion of literary effort. He not merely explored the philosophic aspects of morals and jurisprudence, but laid down definitions strictly practical in their application. Excellent examples of such are found in his little essay on *Topics*. Cicero had, indeed, clearly visualized the Stoic grasp of life in the light of a law eternal and universal and applicable to every phase of human activity.¹⁵

In Cicero's mind, and doubtless in the minds of many of his fellow-countrymen, it was manifestly difficult to draw accurate distinctions between the provinces of what was already clearly understood as equity or fair dealing in daily life and that of a law announcing principles of inflexible right valid everywhere. It is probably true that long before this period the system of which we have spoken had developed in suits between citizens, and citizens and aliens touching fair dealing, and had received a title (*jus gentium*) itself borrowed from the name given to early clan-law (the law of the *gentes* whose members formed the ancient patrician commonwealth of Rome), but now applied, since equitable principles were found through increasing foreign intercourse to be common to many people, as well as to the Romans, to the newly developed system of *prætorian* law. That this was akin to the law of nature in many of its aspects would be readily understood. Hence in Justinian's *Digest* Pomponius (*Digest*, 1, 2, 2) groups the principles of duty to the gods, obedience to parents and loyalty to the Roman city-state as a *primary jus gentium*; a *jus gentium secundarium* being found in those aspects of world law answering to more distinctively human needs. And since *jus gentium primævum* is unquestionably a child of *jus naturale*, it may be said to have formed an easily discerned pathway from *jus naturale*,—a system wholly ideal,—to *jus gentium* intended as a system of practical application, though now perceived to be in certain root-conceptions world-wide and so a part of law universal. *Jus gentium* is then a law, or a system of law, common to all nations, and presenting the forms of a jurisprudence notably adapted to the daily life of man. It is, however, a national law guiding peoples viewed chiefly in their internal affairs. Reciprocity was far from being consonant to the genius of Rome. Nevertheless, the vision of a law *between nations* and governing their reciprocal actions is perhaps now fairly above the horizon, though as yet a long way off: we shall find it ultimately reached in the course of advancing civilization and the upspringing of humanitarian con-

¹⁵ *Atque hoc multo magis efficit ipsa nature ratio, quæ est lex divina et humana: cui parere qui velint (omnes autem parebunt qui secundum naturam volent vivere) nunquam committet ut alierum appetat, et id, quod alteri detraxerit, sibi adsumat* (Cicero, *De Officiis*, III, V, 7).

ceptions compelling recognition by nations of responsibility to the moral reprobation of universal standards.

Thus *jus gentium* originating as law *prætorian* (in gradual modification and broadening of *jus civile*) and gathering to itself many kindred features from subsequently ascertained customs of peoples coming into contact with Rome, became fitted to be a determining element of world law. Into its content there had entered (together with conceptions of intrinsic right) the lofty idealism of Greek poets and philosophers, the social theory of the Stoic who proclaimed an essential solidarity and necessary interdependence of mankind, and the idea of human brotherhood which so signally characterized early Christian teaching. Fragments of the literature illustrating these various phases of juristic thought were preserved and transmitted to modern times through many channels, theological as well as juridical. It is, however, chiefly to the *Digest* of Justinian (A.D. 533), the *Etymologies*¹⁶ of Isidore (circa A.D. 622), the *Decretum* of Gratian (circa A.D. 1140), and the *Summa Theologiæ* of St. Thomas Aquinas (a little over a century later) that we owe the texts which were to serve theological writers in the Age of the Renaissance in their endeavors to apply principles of law universal to the formation of a law which should, in the first instance, regulate or diminish the horrors of warfare, and furthermore constitute a living rule between peoples in time of peace. For the ends in view it is readily seen, bearing in mind the temper of the times, that the task would naturally fall to expositors of theology and morals. It was assuredly well said by St. Augustine: "He who would lay down temporal laws, will wisely consult the law eternal, that he may discern amid its immutable rules what should be commanded and what forbidden."¹⁷

The passage in the *Epitomæ* of Hermogenian preserved in Justinian's *Digest* (1, 1, 5), and which undertakes to summarize the various aspects of *jus gentium*, tells us that by this law wars are brought on, peoples are separated, kingdoms founded, property recognized, boundaries set up and buildings erected, trade, buying, selling, leasing, and obligation in general created: *Ex hoc jure gentium introducta bella; discretæ gentes; regna condita; dominia distincta; agris termini positi; ædificia, locationes, conductiones, obligationes instituta; exceptis quibusdam quæ a jure civili introductæ sunt.* This enumeration, with slight variations, is repeated by Isidore in Book V, chapter VI, of the *Origines*, by St. Thomas in his *Summa Theologica* (Q. XCV, a, 4), and by Gratian in the *Decretum* (1, 1, IX).

It is plain that there is here much confusion of thought, and that what was intended to be described under the term *jus gentium* is the aggregate of such aspects of individual or national action as may properly be brought under general legal regulation. But in the reasoning which came to be employed by those writers of the fourteenth and later centuries, who laid a foundation adequate to the development of modern international thought,

¹⁶ *Originum sive Etymologiarum Libri XX.* ¹⁷ *De Vera Religione*, circa A.D. 400.

it was evident that if wars were to be softened or prevented,—and this, it is to be remembered, was their primary aim,—it would be necessary to invoke considerations drawn from the moral nature of man, and the inescapable identity of his interests with those of his fellows. Hence it is that Franciscus de Victoria in his *Relectiones de Indis*, written early in the sixteenth century, appeals (p. 390) to the testimony of Florentinus in the *Digest* (1, 1, 3) who, referring to the *jus gentium secundarium*, reminds us that nature has formed a bond of relationship not to be broken by injury on the part of a man toward his fellows. Florentinus was a member of the Council of Alexander Severus and wrote early in the third century A.D. He was esteemed as one of the most accomplished men of his time, and in this fragment, as preserved by Justinian, we discern an accurate reflection of the Stoic principle of *Societas*.¹⁸

It is this principle, indeed, applied by the theologians of that day to world affairs which alone could support any structure of international scope. Thus it was that toward the close of the sixteenth century, Suarez, one of the greatest of all the immediate predecessors of Grotius, considers *jus gentium* as a system intermediate between *jus naturæ* and *jus civile*. The four concluding chapters of the second book of his treatise *De Legibus* are devoted to *jus gentium*, and here he strongly emphasizes the conception of an international community world-wide in its range. But while thus rightly conceiving such association as the indispensable condition of human progress from a purely practical point of view, Suarez does not neglect a far higher standard and founds himself on principles identical with those enjoined, as we have seen, by St. Augustine: *Dicitur ergo humana lex quia proxime ab hominibus inventa et posita est. Dica autem proxime quia primordialiter omnis lex humana derivatur aliquo modo a lege eterna*.

Here, admitting the final authority of the law of nature, Suarez and his successors applied themselves to the construction of an international system in harmony with the deeper things of morals and religion. National action must become coördinated, on the one hand, in obedience to a divine rule, and on the other, it must recognize the need of self-protection and intercourse as the visible sources of a truly international law.¹⁹ In the view of these great writers, the idea of abstract justice is objectified in the creation of the world order whose units are nations and in which the

¹⁸ *Natosque esse ad congregationem hominum et ad societatem communitatemque generis humani*, etc. (Cicero, *De Finibus*, IV, 2, 4).

Sed omnium, quæ in hominum doctorum disputatione versantur, nihil est profecto præstabilius quam plane intellegi nos ad justitiam esse natos neque opinione sed natura constitutum esse jus.

Id jam patebit, si hominum inter ipsos societatem conjunctionemque perspexeris (Cicero, *De Legibus*, I, X, 28).

¹⁹ It is important clearly to distinguish the sources from the evidences of international law. Dr. Woolsey, in his *International Law*, 4th Ed., pp. 21 and 22, note, says: "Self-protection and intercourse are the two sources of international law. They

individual and particular yield to the permanent and universal. The essential unity of mankind, first grasped in the moral sphere only, thus reaches the positive character of a legal order. The member states of such a world community may not, therefore, assert any right of action incompatible, either in war or peace, with these high standards.

Rightly understood in the light of its origin and history, international law makes an unassailable claim to the loyalty of every friend of civilization. Taking its rise in a recognition of eternal truth and of the undeniable needs of national communities, its source-conceptions are drawn from a realization of primal conditions under which alone civilization may hope to persist and develop. In its essential nature it is seen as a silent yet vivifying element in the associational harmony and progress of the human race, and its appeal is to the permanent and ennobling in individual as in national character and achievement. It may well demand, therefore, a zealous interest in every effort looking to a sympathetic interpretation and a knowledge of its ideals. To assure its expansion and enforce its make it necessary, and the conception in man of justice, of rights and obligations, must follow because he has a moral nature."

In the leading case of *Hilton v. Guyot*, decided by the United States Supreme Court at October term, 1894 (159 U. S. 112, 163), the court said:

"International law, in its widest and most comprehensive sense—including not only questions of right between nations, governed by what has been appropriately called the law of nations; but also questions arising under what is usually called private international law, or the conflict of laws, and concerning rights of persons within the property and dominion of one nation, by reason of acts private or public, done within the dominions of another nation—is part of our law, and must be ascertained and administered by the courts of justice as often as such questions are presented in litigation between man and man duly submitted to their determination.

"The most certain guide no doubt for the decision of such questions is a treaty or statute of this country. But when, as is the case here, there is no written law upon the subject, the duty still rests upon the judicial tribunals of ascertaining and declaring what the law is whenever it becomes necessary to do so in order to determine the rights of parties to suits regularly brought before them. In doing this, the courts must obtain such aid as they can from judicial decision, from the works of jurists and commentators, and from the acts and usages of civilized nations."

At the Conference of Teachers of International Law, held in Washington, April 23-25, 1914, under the auspices of the American Society of International Law, the following resolutions, reported by a subcommittee, of which the present writer had the honor to be chairman, were unanimously adopted by the Conference:

(1) "In the teaching of international law emphasis should be laid upon the positive nature of the subject and the definiteness of the rules."

(2) "In order to emphasize the positive character of international law, the widest possible use should be made of cases and concrete facts in international experience."

(3) "In the teaching of international law care should be exercised to distinguish the accepted rules of international law from questions of international policy."

(4) "In a general course of international law the experience of no one country should be allowed to assume a consequence out of proportion to the strictly international principles it may illustrate."

"The interest of students can best be aroused when they are convinced that they are dealing with the concrete facts of international experience. The marshalling

prescriptions should be the aim of all who would seek part in a world inheritance at once the support and the promise of enlightened happiness for mankind.

of such facts in such a way as to illustrate general principles lends a dignity to the subject which cannot help but have a stimulating influence.

"Hence international law instruction should be constantly illustrated from those sources which are recognized as ultimate authority, such as—

- (a) Cases, both of judicial and arbitral determination;
- (b) Treaties, protocols, acts and declarations of epoch-making congresses. (Westphalia, 1648; Vienna, 1815-23; Paris, 1856; London, 1909.)
- (c) Diplomatic incidents ranking as precedents for action of international character;
- (d) The great classics of international law."

In the case of the *Zamora*, decided by the Judicial Committee of the Privy Council, April 7, 1916 (2 A.C., p. 77), it was objected on the part of appellants that the provisions of Order in Council No. XXIX material to the present question violated the law of nations, and that the prize court should not act upon them. The court held that the Crown has no power by Order in Council, but prescribed an order to alter the law which the prize courts have to administer, even where that law is imperfectly ascertained and defined; but when an Order in Council mitigates the rights of the Crown in favor of enemies or neutrals, it is the duty of the prize court to act upon it.

The part taken by courts of justice in the development of international law is comprehensively considered by the Hon. Simeon E. Baldwin, in the *American Law Review* for March-April, 1901; and the "Legal Nature of International Law" forms the subject of an exhaustive article by Dr. James Brown Scott in the *AMERICAN JOURNAL OF INTERNATIONAL LAW* for October, 1907.

"The Sources of International Law" forms the subject of a brief article by Sir Frederick Pollock in the *Law Quarterly Review* for October, 1902, p. 418; this article being subsequently expanded by the author in Vol. XII of the *Cambridge Modern History*.

INTERNATIONAL SOCIETY AND INTERNATIONAL LAW

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In a recent work entitled *The Psychology of Nations*¹ we are told that "International Law must be made intelligible to very young minds, and now that we are to have an international seat of congresses and courts, the interest must be made in its existence to give reality to the idea of internationalism." This admonition by a psychologist is illustrative of a widespread attitude toward international law; that it is a matter readily understood, for which there need be no specialized training, everyone being competent to pass judgment upon any subject about which international law is supposed to be concerned.

At the opposite extreme are certain specialists in the subject of international law, one of whom has recently stated that it is no more possible to make the principles of international law intelligible to the untrained mind than to popularize for infants the binomial theorem, or the laws of optics, or the rule against perpetuities.² We have from a combination of these examples the strange paradoxical phenomenon not infrequently observable: some of us are apt to regard matters outside of our own fields of specialization as easy to be understood, and have no difficulty in making generalizations with reference to them by which a specialist would not dare to hazard his reputation; and yet at the same time we are apt to consider our own fields as caviare to the general, even to the extent of assuming that one's own particular body of knowledge is esoteric. International law is, on the one hand, not a matter for the instruction of infants, nor, upon the other, should it be treated as an esoteric subject, for it has to do with the actualities of life.

That there has been since the outbreak of the World War a feeling on the part of many writers that there should be some restatement of the fundamental principles of international law in terms of international life, is apparent from many titles in the recent literature of the subject. "The New International Law," "The Renovation of International Law," "The Future of International Law,"—such are a few of these titles, showing the drift of thought. Hardly had the invasion of Belgium taken place in 1914 before a leading German scholar set forth an essay entitled "The New International Law," in which he insisted that it was necessary to rebuild that body of thought according to the methods of German science, "for

¹ By George E. Partridge, 192.

² R. R. Foulke, *International Law*, preface.

German science alone has been able to work in systematic fashion"; and looking into the future, he hoped that Germany would be so "vastly fortified by her victorious war that she could undertake the protection of international law just as, centuries ago, the Lombard, Dante, invoked the German Emperor as the protector of law and the shield of justice."³

Others have insisted that international law has departed from its original foundations, that it is necessary to eliminate the influence of certain eighteenth century writers, especially Vattel, and, paraphrasing a familiar maxim, cry "Back to Grotius."⁴ Still others have felt that international law has developed too much along the positive side, and thereby has eliminated too much of its original ethical content. Still others again argue that international law is weak because vague, and vague because of its lack of complete expression in a codified form. Again, there are those who object that, to the extent that there has been a process akin to codification, those conventions and treaties that have been regarded as law-making were but unwholesome compromises and have therefore retarded rather than advanced the progress of legal ideas as applied to international society.

And, finally, there are those (perhaps they are the greatest in number) whose insistence is that international law has been weak because of the lack of force behind it, by which the vindication of its rights can be enforced and the performance of its duties compelled. In other words, the insistence is that international law must acquire a satisfactory sanction. And finally much of the argument in favor of international organization rests upon the assumed need for the codification of international law,—an international legislative process and the machinery for its enforcement, not only judicial but executive, a need which fifty years ago James Lorimer set forth as the ultimate problem of international jurisprudence.⁵

Before considering the character of the new international law, it is obviously desirable to weigh the objections to the old, the fundamental principles having to do with the essential qualities of international rights and duties. If we go back to Grotius, we shall see, as has been so frequently recognized, that his system is based upon two juristic concepts: one, that of the law of nature; the other, that of custom and precedent evolving general rules (*jus gentium*). The former conception had been developed from the Greek Stoics and the Roman civilians through the Middle Ages, so that Grotius, while adopting the law of nature as a source of international law, was using an idea familiar to all who had been thinking in legal terms. The law of nature furnished an idealistic and ethical content which could be put in strong contrast with the unethical and violent attitude of state toward state. No one was free from the obligations of the law of nature, discoverable by man through the exercise of right

³ Kohler, *Das neue Völkerrecht*, *Zeitschrift für Völkerrecht*, Sept., 1915.

⁴ C. von Vollenhoven, *The Three Stages in the Evolution of the Law of Nations*, 1917.

⁵ Lorimer, *Institutes of the Law of Nations*, Book V.

reason. Bodin had set forth the doctrine of absolute sovereignty, the Roman conception of *imperium* applied to a sixteenth century territorial state. The territorial state coming to be the type of European political organization, the doctrine of Bodin had application to other kingdoms and commonwealths than that of France, which he had particularly in mind in propounding the theory. It is true that the theory of sovereignty which Grotius developed differs in some degree from Bodin's. Back of Bodin was the French monarchy; back of Grotius was Dutch federalism and a distinct body of constitutional principles. But Grotius's theory of sovereignty is not essential to his conception of international law. The point is that, whatever the doctrine of sovereignty, whatever the nature of states, each was subject to the universal, immutable principles of the law of nature.

Not as antagonistic to this, but rather as complementary to it, was the other factor in Grotius's theory, one equally familiar to civilians and jurists, the idea of a body of rights and duties growing out of universal practice, custom, and precedent. With Grotius the two factors, *jus naturæ et jus gentium*, form an integrated whole. This phrase comes later to connote international law in the modern sense.⁶ It remained for his successors to separate the law of nature from the positive law of nations and frequently to exalt the former to the exclusion of the latter. Thus Pufendorf practically eliminates the binding force, as between nations, of custom and precedent. He erects the law of nature into a general scheme of legal philosophy, or of justice, dominating the relations of external action, both of individuals and of states.

On the other hand, beginning practically with Leibnitz (fitting thus into a philosophy of experience), the legal relationships of states are founded upon what were conceived to be the actualities of international life as these were evidenced in treaties and conventions. The great difficulty with the law of nature, as set forth by Pufendorf and his successors, was that, being a body of universal, immutable principles, it was in a way at once idealistic and self-limited. The rights of states, according to the law of nature, were essential attributes or categories of states. They were qualitative factors entering into the very nature of states themselves. The conception of duties was limited largely to the recognition merely of rights which the law of nature posits to states as their essential attributes. Thus, under a theory of the law of nature, states become as individuals in the so-called state of nature, each having absolute or natural rights, as against the others, which under the law of nature they were bound to recognize, but which could only be vindicated under a system of self-help, for in such a state of nature, as Locke showed, each was the sole executor of the law of nature and the sole maintainer of rights.

⁶ Cf. Shakespeare's amazing anticipation of this phrase: "By gift of heaven, by law of nature and of nations," *Henry V*, II, 4, line 80, "These moral laws of nature, and of nations speak aloud," *Troilus and Cressida*, II, 2, line 184.

From this conception of the legal attributes, or qualities, of states, proceeded the doctrines of state equality and of the other fundamental rights of states. Aside from all of the historical and philosophical difficulties in such a conception of law as is embodied in the theory of the law of nature, it is apparent that such a theory does not take account of the factors of change in international life, some of which we associate with the idea of progress. Indeed, the theory of the law of nature, as it was accepted in the seventeenth and eighteenth centuries, preceded all theories of national progress. Montesquieu, who faintly suggests such an idea, was not in sympathy with the prevalent system of the law of nature. But his ideas and those of the other eighteenth century writers were radically different from the later conceptions of national progress developed under the influence of the theory of biological evolution.⁷ The theory of the law of nature is not only opposed to progress, but it is antagonistic to all plans for international organization which go farther than the binding of states by means of formal agreements. To paraphrase a remark of Professor Frankfurter, international relations were conceived to be not a way of ordering life, but jural categories encysted in phrases applicable *semper ubique et omnibus*.⁸

It was therefore a normal development in juristic thought which Wolf set forth. Dissatisfied with the inelastic and logically anti-social character of the law of nature as set forth by Pufendorf, but not wholly rejecting that system, he developed a conception of international organization, a *civitas maxima*, which is, if pushed to its logical conclusion, a negation of some of the vital elements of a law of nations.

The two currents flowing from Grotius are in a sense united in the writings of Vattel, who sought to retain the ethical content without relinquishing the firm foundation of positive custom and precedent. Wolf had spoken of the *civitas maxima* as the great commonwealth of nations having a necessary and natural basis upon which are built the rights and duties of the members to each other. Vattel proceeds from the idea of society, not in the sense of a *civitas* (a juristic entity) but as the society established by nature between all mankind. He said:

The universal society of the human race, being an institution of nature herself, . . . all men are bound to cultivate it and to discharge its duties. . . . And since nations, considered as so many free persons living together in a state of nature, are bound to cultivate the human society of each other, the object of the great society, established by nature between all nations, is also the interchange of mutual assistance for their own improvement and that of their condition.⁹

⁷ Bury, *The Idea of Progress*, *passim*.

⁸ *New Republic*, April 13, 1921.

⁹ Vattel, *Prelim.*, Sec. 11. Von Vollenhoven's indictment of Vattel is logically a denunciation of neutrality, and a reversion to the conception of just and unjust wars, elaborated by Grotius. *Op. cit.*

This idea of society, the Great Society, set forth here by Vattel, had been largely anticipated by the judicious Hooker, who, writing about 1592, some thirty odd years before the appearance of Grotius's great work, thus described the law of nations:

Now, besides that Law which simply concerneth men, as men, and that which belongeth unto them as they are linked with others in some sort of Politique Society, there is a third kinde of Law which toucheth all such severall bodies Politique, so far forth as one of them hath publique commerce with another. And this third is the Law of Nations. . . . The strength and vertue of that law is such, that no particular nation can lawfully prejudice the same by any their severall laws and ordinances, more than a man by his private resolutions the law of the whole Commonwealth or State wherein he liveth. For as civil law, being the act of the whole body Politique, doth therefore over-rule each severall part of the same body; so there is no reason that any one Commonwealth of itself should, to the prejudice of another, annihilate that whereupon the whole world hath agreed.¹⁰

The interesting thing about this excerpt from Hooker is that, in the first place, he has a modern conception of international law as a law of a great society, and, secondly, he affords a conception resting upon the recognition of legal duties. One regrets that the logical mind of this learned man did not further interest itself in the subject of the law of nations, so that we might have had, not only as a part of legal literature, but as one of the classics of Elizabethan English, a statement of fundamental principles of the law of nations.

Practically coincident with the downfall of Napoleon and the reconstruction of Europe, there is what amounts to a demolition of the old doctrine of the law of nature following the examination of law in the light of the philosophy of Kant. To what extent Kant's philosophy of law contributed to the idea that international relationships, expressed in terms of law by treaty, could be determined by a small group of sovereigns, is a subject which might well be investigated. It can be no mere coincidence that after the appearance of Kant's study on the nature of law, the seventeenth and eighteenth century doctrines of the law of nature tended to disappear. The idea of will expressed in the norm of law as a command, and the conscious selection of alternatives through will, left no place for the old immutable, universal principles of the law of nature.¹¹ At the same time there was afforded a juristic basis for the statement of the principles of international law in conventional form by international agreement. Kant's *Essay upon Everlasting Peace* appeared during the wars resulting from the French Revolution; and it is interesting to compare the

¹⁰ *Eccl. Polity*, I, 10.

¹¹ Except, perhaps, to the extent that by the law of nature an international person (state) has a right to rights. Cf. Ivor J. C. Brown, *The Meaning of Democracy*, 50.

propositions set forth in that essay with the declaration of the sovereigns of the Holy Alliance at Aix-la-Chapelle some twenty years afterwards.¹² We have in that declaration the doctrine that the peace of the world can be reached only by a recognition of the general principles of international law. While many international documents dating from the Peace of Utrecht may be called in a way law-making treaties, nevertheless the professedly law-making or law-recognizing treaties which characterize the nineteenth century began with the declaration of the Holy Alliance. In apparent opposition to this position there is to be found, in the second quarter of the nineteenth century, a considerable elaboration of the so-called fundamental rights of states set forth by those writers who were strongly attached to the idea of nationality, and especially by those who had the point of view of the small and relatively weak German states. Naturally enough, the doctrine of the absolute rights of states is attractive to those who sympathize with national aspirations as yet unrealized in strong political organization. The attainment of separate nationalities, not the insistence upon the old law of nature, allowed for this emphasis upon the fundamental rights of states. Within recent years, the recrudescence of a similar attitude toward the absolute rights of states is to be observed. As set forth by the American Institute of International Law, it is no doubt in part the product of a similar political situation. Generally, however, the idea of translating international rights and duties into the form of international commands by means of treaty gained headway through the nineteenth century and has its culmination in the conventions of The Hague Conferences of 1899 and 1907.

In so far as one is able to ascribe any sort of legal philosophy at all to most of the continental writers of the first half of the nineteenth century, it seems to be a legal philosophy based largely upon the ideas of Kant. The spirit of the Common Law and the influence of Austinian jurisprudence combined to emphasize the positive character of English contributions to the literature of the subject. And the same may, in general, be said of writings by American jurists. But in Germany there was proceeding a radical modification of the old conception of the law of nature based upon the philosophy of Hegel. It was logical that those who held to the doctrine, that legal ideas are matters of development, should resist an ultimate and definitive statement of them in statutory form. The great founder of the historical school of jurisprudence, Savigny, was notably opposed to the codification of German law. It is not difficult to see how an historical jurisprudence which, narrowly considered, regarded only the past, lacked a forward and ethical outlook. Therefore need was felt of a juristic philosophy which embodied an idealistic element through which improvement

¹² Declaration of the Five Cabinets, Aix-la-Chapelle, November 15, 1818, Hertlet, *The Map of Europe by Treaty*, I, 576.

and progress might be realized. As the ideal lay in harmony, the obvious inharmony of actualities must gradually give way to the embodiment in concrete form of idealistic aspiration.¹³

Still later there appeared the combined influences of evolution and of positivism. With evolution there is developed an essentially new conception of national progress. With Comte, progress was the development of order. Humanity was advancing, according to him, through three stages, theological, metaphysical, and positive. Comte's famous "three stages" have been discarded as statements of a law of progress. No law of progress has yet been formulated which will work. Indeed, the very idea of "progress" is but an "optimistic synonym for change."¹⁴

One must always be on one's guard against the fallacies of argument from analogy. For centuries political theorists have been fond of finding analogies in political organization from the human body; and while evolution has properly to do with biological processes only, it permitted a new emphasis, based upon the analogies between the physical and political body, to be given to the traditional organic or organismic theory of the state. To admit that evolution in law and political science is only by way of analogy, which breaks down when pressed too far, is not to deny the extraordinary influence which that doctrine has had upon the conception of law, as well as upon the social sciences generally. Professor Vinogradoff, in his *Historical Jurisprudence*, quotes the saying of Ihering's as the appropriate epigraph to the evolutionistic movement in social science:

Law is not less a product of history than handicraft, naval construction, technical skill: as Nature did not provide Adam's soul with a ready-made conception of a kettle, of a ship, or of a steamer, even so she has not presented him with property, marriage, binding contracts, the State. And the same may be said of all moral rules. . . . The whole moral order is a product of history, or, to put it more definitely, of the striving towards ends, of the untiring activity and work of human reason tending to satisfy wants and to provide against difficulties.¹⁵

This teleological conception leads back, with many writers, to Hegel; and in Kohler there is a frank insistence upon a new form of the law of

¹³ "There is in the course of social and national life [why not international?] a final, necessary, ideal principle which is always the same in the infinite variety of forms and changes of events. This principle is the idea of man or of common human nature, which acquires knowledge of its own unity through a gradual development and continual movement, and uses it to conquer multiplicity and discrepant special characteristics. If these fail, human nature would no longer be able to develop and progress, since it would have no restraints to overcome. There is no development, progress, or evolution where no defect is met, or where there is no imperfection to conquer." Miraglia, *Comparative Legal Philosophy*, 118.

¹⁴ Bury, *The Idea of Progress*, 352.

¹⁵ Vinogradoff, *Historical Jurisprudence*, 137, quoting Ihering, *Zweck im Recht*, II, 112.

nature, which he calls *Kulturrecht*. Unlike the old, unchangeable, inflexible law of nature, the neo-Hegelian law of nature is the active agency in the future development and ultimate attainment of cultural ideals.¹⁶

It is noteworthy, further, that notwithstanding the permeation of Hegelian ideas in the work of Kohler, he makes Bodin's theory of sovereignty the fundamental basis of international law. "Every modification of Bodin's theory," he says, "interferes with international law."¹⁷

Under no such Hegelian leadership as Kohler avows are those who regard, without necessary teleological connotations, law as a social product. The phrase *Ubi societas ibi jus est*—where there is society there is law—is a phrase not apparently to be found in the *Corpus Juris* of Justinian. As applied to international law, it seems to have made its first appearance in the writings of the German jurist, Heffter, about the middle of the nineteenth century. Much later Westlake used the phrase for the foundation of the whole system of international jurisprudence. Defining international law as the body of rules prevailing between the states, he said that states

form a society the members of which claim from each other the observance of certain lines of conduct, capable of being expressed in general terms as rules, and hold themselves justified in mutually compelling such observance, by force if necessary; also that in such society the lines of conduct in question are observed with more or less regularity, either as the result of compulsion or in accordance with the statements which would support compulsion in case of need. It is an old saying *Ubi societas ibi jus est*; "where there is a society there is law." . . . The maxim correctly puts before us society and law as mutually dependent. . . . Without society no law; without law no society. When we assert that there is such a thing as international law, we assert that there is a society of states: when we recognize that there is a society of states, we recognize that there is international law.¹⁸

Thus international society is not a "natural" but a juristic idea. From Westlake's conception we are led to a consideration of the fundamental nature of international law in accordance with what is commonly known as the pragmatic point of view. It does not necessarily posit states as naturally in society, nor does it posit therefore a law of nature. The reconsideration of international law, from a pragmatic point of view, takes one at once into the facts of international life. It is not necessary even

¹⁶ Kohler, *Die Grundlagen des Völkerrechts*, 3; *Lehrbuch der Rechtsphilosophie*, Zweite Auflage, 51-53; Geny, *Science et Technique en Droit Privé Positif*, II, 111-126.

¹⁷ Kohler, *Grundlagen des Völkerrechts*, 3; cf., A. Affolter, *Recht über den Staaten*, *Archiv für Rechts- und Wirtschaftsphilosophie*, xiv, 97-103.

¹⁸ The Collected Papers of John Westlake on Public International Law, 3. A. R. Lord (*The Principles of Politics*, 1921, page 48), calls attention to the idea of *Societas* (partnership) in the Social Compact. No contractual conceptions inhere in the ideas of Society as expressed by Hooker, Vattel, Heffter, or Westlake.

to assume as a fundamental postulate Bodin's theory of sovereignty. It is certainly not proper to begin with a group of abstract entities called states to each of which are imputed sovereignty in the sense of Bodin and other categories from which rights and duties proceed.

What are the facts of international life? To answer this question, there must be, at the outset, recourse to political and physical geography. Frontiers are not irrevocable; but the physical configuration of the earth, if not inexorably fixing man's political organization, has had, and must continue to have, a preponderant influence upon it. The modern organization and methods of industry, commerce, and labor certainly afford phenomena that are truly international. A juristic scheme which is blind to fundamental differences based upon race or nationality, or to differences of culture, is as faulty as one which treats the subjects of international law as abstractions, indefinite in number, interchangeable in position, and equal in status. Certainly there is nothing more concrete than states, nothing less so than the State. An international law which conceives of states as absolute units, essentially equal, mutually exclusive, with the points of contact in time of peace largely formal and decorative, will not fit in with the facts of international life of the present time.

Or let us put it in another way. Law is a social product and international law the product of juristic international society. Nevertheless the content of international law has been largely determined by that rudimentary stage of international society in time of peace with which Grotius was familiar. To compass the relationships of modern international life, international law must increase its content. How can this be done? Certainly not by mere speculation; certainly not by the inculcation of the vague ideas of a shadowy internationalism; nor by the idea that the whole structure of international law is erected for the purpose of avoiding war. Much of the writing in the field unquestionably falls within the description which Matthew Arnold gave of religion, as "morality touched with emotion." Difficulties arise from two different sources. One is the assumption that international law is a perfected whole, with its content limited to the principles developed by an obsolete condition of international life. The other is the attempt to introduce into international law an artificial, even though idealistic, content, not as yet the expression of existing international relationships. By considering international law as a perfected body of principles, having what Bury calls "the illusion of finality," one falls back upon the absolute rights of states and thereby denies the possibilities of progress in international life. By which is meant change towards harmony in international relationships. At the opposite extreme is the creation of a super-state, a *civitas maxima*, which might attempt to formulate norms of rights and duties that are not, strictly speaking, international, but rather constitutional: evolving a Bundesrecht, not Völkerrecht, with another illusion of finality. A rational and practicable line of devel-

opment would seem to be the conscious perfection of the international law of procedure. The late Professor Maitland remarked that the principles of substantive common law were deposited through the interstices of procedure. Says Professor Vinogradoff:

The modern stage of international law and procedure are at a stage corresponding to a great extent with the criminal and civil procedure of ancient law. Procedure begins to develop at a time when the element of public compulsion is absent or insignificant. The transitions from one stage to the other, from a legalized struggle to arbitration, and ultimately to fall within jurisdictional authority, are very gradual. Two circumstances contributed powerfully to effect the transition from international law to a law regulated by the commonwealth: the growth of a mediating power to which parties were forced to submit; and the increasing strength of the view that even imperfect compromise is better than open struggle.¹⁹

The traditional law of procedure between states in time of peace has been that of diplomacy; and war itself has been falsely designated by certain writers as the procedural process *par excellence* of international law. Later, international arbitration appears as an acceptable but not universal mode of settlement. It has developed a very precise law of procedure. Resort to it has not become universally compulsory, and its results, usually in the nature of compromise, are frequently imperfect. Arbitration proceeds from initial agreement. Considering the traditional nature of international persons, adjudication must proceed also from initial agreement, but with this essential difference: however all inclusive a general arbitration treaty may be, an agreement upon the specific question to be arbitrated, technically known as the *compromis*, remains an essential element in the process. The agreement to create an international court which shall have jurisdiction over a certain type of controversy between states, would eliminate the *compromis*, which so frequently in the past has opened the door to a compromise settlement by a court of arbitration. If a court is established with a jurisdiction agreed upon, whether or not its process is compulsory, it can then proceed to a judgment in accordance with the principles of law. By this process, not by codification, is the way of development in international law indicated. A court with jurisdiction defined needs no code of substantive law in order to reach a judgment. No code has been necessary in order to furnish the Supreme Court of the United States with a rule by which to settle controversies between States. It is law because the court enforces it, and enforced because it is law: thus are joined juristic fact and legal fiction.

The Federal Constitution provides that the Supreme Court of the United States shall have jurisdiction over all controversies between States. In other words, any controversy between States which can be settled by a judicial proceeding is within the jurisdiction of the Supreme Court of the

¹⁹ Vinogradoff, *Historical Jurisprudence*, 351.

United States. Considering the allocation to each State of a definite legal *status quo* under the Constitution, no controversy between States of the Union is at the present time conceivable which is not a matter for judicial determination and settlement; but judicial determination and settlement do not mean, necessarily, the employment of force for the execution of the decree and judgment of the court in settling the controversy. The essential point is that, with reference to each other the States of the Union are in a condition of a legal *status quo*, and therefore controversies are based upon a legal relationship and not upon a political one.

There are those who would organize an international court of justice upon the pattern of the Supreme Court of the United States, in so far as it has jurisdiction over the States of the Union. The plan of the International Court of Justice, under the auspices of the League of Nations, originally provided for compulsory process, a stipulation stricken out when the plan was adopted by the Council and Assembly of the League of Nations. With a court organized and open, a state which would repudiate its process might soon come to be in the position of a state which declines arbitration, or, having accepted arbitration, refuses to abide by its award.

Certainly not at present, if ever, may one claim that all controversies between states are justiciable; that is to say, one cannot assume that all controversies between international persons are determinable by legal rules of action. Herein we must admit that international law now differs materially from municipal law. In theory, at least, all of the relationships of private life are potentially determined by legal rules. All external actions of persons are in municipal law either legal or illegal. To such an extent has social life within the states been determined and fixed by law, that there are no areas of external action by persons which are exempt from the field of legal protection or control. Within the state at any one time, an act is either legal or illegal, and the business of the court is to determine into which field the act falls. This result is the end of a process centuries long, by which law and government within the state have become inseparable. Policy within the state may result in the formulation and adoption of a new law; but within the state this is legal change. A new law rescinds or modifies a prior legal relationship. A new law creates a new legal relationship only in the sense that it modifies existing relationships.

In the field of international law, however, we are faced with an altogether different situation. There are still large areas of external action by states with reference to which positions are assumed which are neither legal nor illegal. They are simply non-legal, or strictly political. For we must not think of a law as a rule of action, necessarily implying penalties for its non-fulfillment. It is rather a means by which the individual or group in society may discount the future, by having certain future acts (interests) protected. In other words, while within the state the will of

the individual is assumed to be free, the execution of that will in external action proceeds, in theory at least, upon the basis of a potential and determinable *status quo*. In international life, some of the external acts of states have been determined wholly by policy; and to some extent policy has obstructed the extension of the purely legal area. International relationships represent, therefore, at any given time a static situation. A static situation does not mean fixity, so that no further development of legal relationship is possible. It means the substitution of a legal relationship for one that is not legal, but that legal relationship may afterwards be modified. Where policy occupies the field, the situation is still dynamic.

This is the essential distinction between the two classes of controversies commonly described as justiciable and non-justiciable. A justiciable controversy is one in which the external action of a state is challenged upon the ground that it does not conform to an established rule of action. A non-justiciable controversy is one in which the external action of a state is challenged, not upon the ground of its illegality, not upon the ground that a rule of action exists which is violated, but because with reference to it there is no legal rule of action. The occupation of these non-legal areas in international life by legal relationships, the change from a dynamic to a static situation, can come about only gradually and by the agreement of its members, gradually by tacit consent or through conscious agreement to reduce the dynamic to the static, reached in part by diplomatic adjustment, in part by law-making treaties, in part by the creation of an international judicial jurisdiction. Each member of international society comes thus in its external actions more and more to be able to discount the future. This is not, it must be confessed, the only basis for the antithesis of justiciable and non-justiciable controversies, for there are areas wherein international legal rights and duties cannot be enjoyed and perfected because of obstructive international policy. Here, one may insist, there is a legal conflict: that the political obstruction is an illegal obstruction. Answer may be made to this objection that it is the lack of solidarity in international life, the imperfection of international society, that permits the obstruction, and the situation is thereby recognized as dynamic rather than static, and hence non-legal.

The Covenant of the League of Nations recognizes this distinction. While it makes provision for an international court of justice in addition to the perpetuation of the machinery of international arbitration, and embodies in its preamble an appeal to the "understandings" of international law, the Covenant is framed upon the theory that machinery is necessary for the settlement of these dynamic, non-justiciable controversies. To the extent that the Council of the present League of Nations has jurisdiction over controversies, that jurisdiction is over non-justiciable disputes. And herein, in the minds of many, lies one of the greatest objections to the present Covenant of the League of Nations. The danger is felt by many

that the organization of the Council of the League of Nations and its control by preponderance of power will not make for a surrender of those areas in international life which should be governed by law. There is no doubt much to be made of this objection; but, having regard to the actualities of present international life, as the world is left as the result of the World War, political questions remain uppermost.

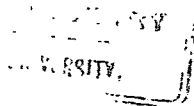
We should be blind to assert that the immediate results of the war have been the recovery of a larger area of strictly legal control. The peace settlement, in so far as it is a settlement, is, after all, a political settlement out of which political questions have arisen and will continue to arise. With reference to many of them, it would seem that no court could be created that in the near future could successfully adjudicate upon some of the larger problems which have already proceeded out of the treaties of peace. Having in mind the nature of the peace settlement, it follows that if the law of nations is to exist, it must rest upon the foundations made by the settlement. The consideration of the vitally important questions, all of them political, has so far been undertaken by the Supreme Allied Council or by a smaller group representing those nations immediately responsible for the victory and for the terms of settlement. Until these matters growing out of the treaties are settled, one cannot be assured of any very great advance in the adoption of purely legal rules of action among states. The fragments of the old Russian Empire, Germany, Austria, Hungary, Turkey, Greece, cannot be considered at the present time as factors in the development of international law. The mind of the world is still too much concentrated upon those fundamentally political questions which have resulted from the war to have any common ideas either for the development of international law by means of new law-making treaties, or for the codification of the law of peace as it existed prior to August of 1914. In that month, in a way, the old international law came to an end, for the invasion of Belgium and the retribution which is being exacted for that invasion and its results give a new and solid basis for international law than the world had ever before afforded.

Gladstone remarked, when the neutrality of Belgium was threatened in 1870, that the foundation of the public law of Europe lay in treaty faith. Bethmann-Hollweg admitted in the Reichstag, in August, 1914, that Germany was committing a supreme offense against the law of nations by violating the treaty for the neutralization of Belgium, but he claimed that necessity demanded it, and therefore even the violation was justified. The position of Germany today is the answer to that contention. The foundation of international law is the doctrine of *pacta servanda*; that treaties are to be respected and lived up to; that without recognition of the binding character of international obligations, legally as well as morally, there can be no international society in any juristic sense. But along with this idea there is the other, that international society has the right and duty

to express itself with reference to the nature of treaties that are thus to be preserved. A treaty that is secret, which aims at the detriment or destruction of other states, is an act essentially anti-social in nature, and in some way the world should be protected against it. No provision of the Covenant of the League of Nations more correctly expresses the better aspirations of modern international life than that which requires that treaties, in order to be respected, shall be made public.

An international organization has come to be essential to the existence of international law. It is not so much the business of international law to prepare a code for war, as it is to determine the rights and obligations of states in time of peace. Controversies between states will not cease any more than controversies between individuals within the state have disappeared. For a long time to come those controversies which are dangerous to the peace of the world are likely to be political and non-justiciable. Nevertheless, as order proceeds, as it must proceed, out of the present chaos, as interdependence goes forward among nations, further areas of international life are to be recovered from policy to law. The causes of war lie deep in political controversies. The occasions of war are frequently found in the violation of recognized legal right and duty.

Not underestimating the necessity of organization for the purpose of settling controversies of the first type, the need of an organization for the judicial settlement of international disputes, upon the basis of legal rights and duties by an international court of justice, is no less evident. By its very nature, an international court of justice will lack the dramatic qualities of an Allied Council or the Council of a League of Nations. Nevertheless, as an expression of the quiet and abiding convictions of international life, it may be a very potent factor in recovering the sense as well as the conscience of mankind. Founded upon treaty agreement, it will furnish the necessary basis for the modern structure of international law. In international organization there must be an embodiment, an expression, not merely of the aspirations of the few—it must be in immediate contact with the actualities of international life. The international law of the future, deriving a renewed vigor on the basis of international agreement from the creation of an international court of justice, must seek to interpret the actualities of international life, for in that way mainly, if not solely, can it become the "expression of the organized opinion of mankind."



GREEK INTERSTATE ASSOCIATIONS AND THE LEAGUE OF NATIONS

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The political achievements of the Greek people are so manifold and so important that any student of modern politics naturally is tempted to turn to ancient Greece to find the origin of, or parallels to, recent developments in his own field. And so there are not wanting those who would see in certain unions or associations of Greek states anticipations of the ideas which are incorporated in the newly constituted League of Nations. However, the view that any close parallel to the League of Nations existed in the ancient Greek world is due, I believe, to a misinterpretation or idealization of the character and aims of these ancient associations. Accordingly, in the present article I shall try to give a survey of the chief types of interstate associations that arose in ancient Greece, besides suggesting certain changes in their current English nomenclature, which is apt to mislead the casual reader as to their true character.

When the Greeks made their way into the lower part of the Balkan peninsula which we now call Greece, they came in large racial groups, each distinguished by its ethnic name—Arcadians, Achæans, Bœotians, Thessalians, and so forth. Each of these *ethne*, if we may employ this convenient Greek term (corresponding to the German *stamm*), was itself composed of a number of smaller groups, which we call peoples or tribes. The *ethnos* constituted a religious as well as a loosely-knit political unit; it was the primitive Greek state, consisting of an association of larger and smaller kinsman groups.

Many of these *ethne* were broken up into smaller units in the course of the successive Greek migrations; others met a like fate after the final settlement of the Greeks in their historic abodes. This later dissolution of the ethnic associations was due in some cases to the rise of the *poleis* or city-states, in others to the development of independent rural communes, within the territory settled by the larger groups. However, although the *ethne* thus came to lose their original political significance, they regularly remained as religious associations, in which city-states or rural communes were united for the maintenance of their ancestral, ethnic

cults. In many cases the states which had a common ethnic bond maintained some sort of a political as well as a religious alliance, and later, as we shall see, the *ethnos* came to form the background of a new form of political association.

On the eastern coast of Greece city-states arose at a very early date upon the sites of towns of the Minoan epoch, and this type of political organization was carried by the Greeks to the islands of the Ægean Sea and the western coast of Asia Minor. It spread farther with the establishment of Greek colonies along the shores of the Mediterranean and Black Seas during the great period of expansion which began about the middle of the eighth century B.C. The result was that the Greek world was divided into hundreds of small sovereign states, some of them rural communes, but the great majority city-states, the presence of which made the history of Greece resemble that of the modern world rather than that of any modern nation, and also gave opportunity for the development of all forms of interstate associations.¹

The *polis* or city-state came to be the characteristic type of Greek state and was the determining factor in the political as well as the cultural development of the Greek peoples. From the primitive tribal associations the *polis* inherited the conception of the state as a union of persons of common descent participating in a common cult. This conception fostered in each community an attitude of jealous exclusiveness towards its neighbors. The ideal of the city-state came to be self-sufficiency in the economic as well as in the political sense. Politically, this was expressed in a passionate devotion to freedom in foreign relations (*eleutheria*) and the right of each state to determine its own constitution (*autonomia*). However, in fact, the city-states were rarely, if ever, economically self-sustaining, and, in spite of their passion for their own political independence, they did not display the same regard for the freedom of their neighbors. Their foreign relations were usually determined by materialistic or imperialistic aims. And out of the welter of common and conflicting interests which consequently developed among the Greek states themselves or between them and their barbarian neighbors, arose the various forms of interstate relations which I now propose to examine.

Since we are only concerned at present with such relations as led to associations or unions of a more or less permanent character, involving the surrender of certain of the sovereign rights of the contracting parties in their international relations, we may pass over the peculiarly Greek institution of *proxenia*, and likewise the special treaties between states which aimed to secure commercial or legal advantages for their respective

¹ For a more detailed account of this transformation of the earlier ethnic groups, see Francotte, *La Polis grecque*, pp. 96-105; B. Keil, *Griechische Staatsaltertümer*, in Gercke and Norden's *Einleitung*, iii, pp. 299-311; H. Swoboda, in Hermann's *Lehrbuch der griechischen Staatsaltertümer*, iii, pp. 3-15.

citizens, or even to provide for the peaceful settlement of interstate disputes. However, in passing, we should note that the practice of settling such differences by arbitration was well established and frequently resorted to.

The interstate relationships which remain for our consideration might be either religious or political. A religious association of states was called either an amphictyony or a *koinon*. As far as we can see, there was no essential difference implied in the use of one or other of these terms, for an amphictyony is merely an association of "dwellers around" or neighbors, and a *koinon* is simply a "commune" or joint association, which might be either religious or political in character. But, although neither the word amphictyony or *koinon* in itself gives any clue as to the nature of these associations, it is clear that the joint maintenance of some particular cult was the *raison d'être* of each. The members of a religious league either might be states associated in the maintenance of the ancestral cult of the *ethnos* to which they belonged, or they might be peoples or communities which lacked this racial bond.

The famous Delphic Amphictyony is the only one of the religious leagues whose organization is known in any detail. Its members were twelve of the Greek ethnic groups, such as the Ionians and Dorians; a fact which places the origin of the Amphictyony prior to the disruption of these hordes and the rise of the sovereign city-states. The religious center of this league was at first the shrine of Artemis at Thermopylæ and later that of Apollo at Delphi. The policy of the Amphictyony was determined by a council in which each of the associated peoples had two votes, although in historic times the city-states of Athens and Thebes had acquired a permanent right to one of the votes of the *ethne* to which they belonged, the Ionians and the Bœotians respectively. The character and purpose of the Delphic Amphictyony is revealed in the words of the oath taken annually by the delegates sent to the council by the several peoples. They swore "not to raze to the ground any city belonging to members of the Amphictyony, nor shut it off from running water either in war or in peace; and, if any member transgresses these provisions, to proceed against him and destroy his cities; and, if anyone plunders the property of the god, or agrees upon, or plots anything against the sacred treasures, to take vengeance upon him with hand and foot and voice and full military force." (Æschines, ii, 115.) From this it is clear that the Delphic Amphictyony was an association for religious and not for political purposes. It is true that it insisted upon certain humane observances in war waged among members of the league, but it did not aim to prevent war even between them, probably because war was regarded as a perfectly normal condition. The Amphictyony was not active politically in the cause of Greek independence nor in the settlement of disputes among Greek states. However, it was at times exploited in the interest of the political ambi-

tions of some of its more influential members, especially Philip II of Macedon and the Ætolian Confederation.²

Turning from the religious to the political associations of Greek states, we find that the latter are of two distinct types: (1) those which are temporary and created for joint action under definite circumstances, *i.e.*, leagues or alliances, and (2) those which aim at the permanent establishment of a new and larger state, *i.e.*, confederations. Let us consider each of these types separately.

Apart from the religious leagues, alliances among the Greek states were regularly concluded for military purposes. Such military alliances were familiar to the Greeks from the earliest times, and can hardly be considered a development from religious associations. They might be concluded between all types of states, tribal, city or federal. They could be either offensive and defensive, or purely defensive in character. In the former case they were technically called *symmachiai*, in the latter *epimachiai*. The essential characteristic of these alliances was that each of the contracting parties retained its independence and its constitution, while all placed their military resources under a common authority in time of war. Most of the Greek military leagues were shortlived: two, however, were more stable unions whose presence profoundly affected the course of Greek history.

The older of the two was the Peloponnesian League, which was organized in the latter half of the sixth century and lasted until 371 B.C. This league was a Spartan creation, having as its basis a series of special alliances between Sparta and the majority of the states of the Peloponnesus, whereby each was obligated to give military aid to Sparta in case of an attack upon the Peloponnesus. Questions affecting the action of the league were decided by a council convoked to discuss each particular case. In this council each of the allied states had equal representation. The meetings were called by Sparta, and that state assumed command of the allied forces in time of war. The position which Sparta held in relation to her allies was termed by the Greeks an hegemony. It is to be noted that the Spartan allies had the right to carry on war against one another or against outside parties without reference to Sparta or the league.³

The second of the great leagues was the Delian League of 477 B.C., often miscalled the Confederacy of Delos.⁴ It was a *symmachia* under Athenian

² On the Amphictyonies, see Causer, in Pauly-Wissowa's *Realencyclopädie*, i, 1905 ff. A list of the pre-Roman religious *koina* among the Greeks is given in P. Giraud, *Les Assemblées provinciales dans l'empire romain*, pp. 40 ff.

³ For the *symmachiai*, see Francotte, *op. cit.*, pp. 162 ff.; Keil, *op. cit.*, pp. 370 ff.

⁴ For example by Bury, *History of Greece*, p. 328, etc. Coleman Phillipson, *International Law and Custom of Ancient Greece and Rome*, ii, pp. 13 ff. and 19 ff., with more exactness speaks of the First and Second Athenian Leagues. See the protest of Fougères in Daremberg and Saglio, iii, 1, 832, against the loose use of the epithet federal, and allied terms. British writers apparently use the word *confederacy* with

hegemony, organized for mutual protection and the avenging of the losses incurred at the hands of the Persians by Athens and the Ionian maritime states. The official designation of the league was 'the Athenian *symmachia*.' ⁵ In it, as in the Peloponnesian League, the allies were bound by special treaties with the leading state, whereby their *eleutheria* and *autonomia* were guaranteed. Here, too, provision was made for a council of the allies to determine the policy of the league, but Athens was entrusted with the command of the allied forces, the supervision of the treasury of the league, and the task of enforcing the other cities to fulfil their obligations. This position the Athenians used to deprive the majority of their allies of their freedom in external and internal affairs, so that they became subjects instead of allies, and the league developed into an empire (*arché*). ⁶

Another good example of a *symmachia* is the second Athenian naval league, to which also the misleading term confederacy is sometimes applied. This league was formed in 378 B.C. to protect the independence of its members against Spartan aggression. Its organization is well known from an Athenian decree of 378/7 B.C.⁷ The territorial integrity and the freedom of the contracting parties was expressly guaranteed in the following words: "If anyone of the Greeks or of the barbarians dwelling upon the mainland or upon the islands, provided that they are not subjects of the king, wishes to become an ally of the Athenians and their allies, he may do so, preserving his freedom and autonomy, in the enjoyment of the constitution he may prefer, without receiving a garrison or a governor, and without paying tribute, upon the same conditions as the Chians, the Thebans, and the other allies." The object of the alliance appears in the clause: "And if anyone shall make an attack upon those who have made the alliance either by land or by sea, the Athenians and the allies are to come to their rescue by land and by sea with their full strength in so far as they can." The members of this league were bound together not merely by separate treaties with Athens but also by treaties between each allied state and the group of the other allies. Provision was made for regular sessions of a council representing the allied states, but the final decision in matters affecting the policy of the league rested with the Athenian assembly.⁸

Before leaving the discussion of Greek military alliances, we should, I think, devote a little attention to the plan for an alliance of the Greek states advocated by the Athenian publicist Isocrates, and to the Hellenic reference to an association of states to which they do not apply the title *confederation*. See *Encyclopædia Britannica*, art. *Confederation*. However, there is no justification for its application to a Greek *symmachia*.

⁵ *Inscriptiones Græcæ*, i. 9.

⁶ Francotte, 162 ff.; Keil, 371 ff.; Thucydides, i, 96 ff.

⁷ *C. I. A.*, ii, 17=Michel, No. 86.

⁸ Keil, 373-4.

leagues actually organized by Philip II in 337 B.C. and by some of his successors on the Macedonian throne in the following century.

The first half of the fourth century B.C. witnessed the bankruptcy of the city-state as a sovereign power. The whole Greek world was in a constant turmoil of foreign and civil warfare. The jealous rivalries of the various states had so weakened their resources and created such intense hatred amongst them that the decadent power of Persia could dictate the terms of a national peace for Hellas. Revolution and counter-revolution marked the internal life of the cities; pirates infested the *Ægean* Sea; trade languished, and its decline heightened the general economic distress. As a remedy for these conditions, Plato and Aristotle advocated the complete isolation of the *polis*, but Isocrates caught the vision of a Pan-Hellenic union.

This union was to take the form of a *symmachia* for war against Persia, a project which he thought could afford a basis for common action acceptable to all Greeks. The immediate aim of such a war would be the occupation of Asia Minor, which would open up a new field for colonization and relieve the overpopulation of Hellas. But the league was to accomplish more than that. It was to act as a guardian of the peace in Greece itself, to preserve the independence of the separate states, to police the seas, and to put an end to the interminable class and party warfare. At first Isocrates looked to his native city of Athens to take the lead in forming his projected alliance, but finding that his appeals to his fellow-citizens met with no response, he finally addressed himself to Philip II of Macedon, who was actually destined to accomplish the unification of Greece.⁹

The Pan-Hellenic league which Philip organized in 337 B.C. betrays the influence of the ideas of Isocrates. The Greek states south of Thermopylæ (except Sparta) and the insular allies of Athens were formed into a league for the preservation of peace in Hellas, the maintenance of the independence of its members in the enjoyment of their existing constitutions, the suppression of violent revolutions within the cities, and the defence of private property. The enforcement of these conditions was entrusted to a "common council of the Hellenes," which met at the Isthmus of Corinth and in which each member of the league had a representative. The league as a whole concluded a *symmachia* with Philip, whereby he received the right to command its forces on land and sea; the military obligations of the cities were definitely stated, but no tribute was imposed upon them. This creation of Philip's was not a Macedonian empire but a military alliance under Macedonian hegemony.¹⁰ The Pan-Hellenic union was dissolved by Alexander in 324 B.C. when he issued

⁹ J. Kessler, *Isokrates und die panhellenische Idee*.

¹⁰ Belozh, *Griechische Geschichte*, ii, pp. 572 ff.

his demand for deification by the cities of Greece and thus proclaimed his intention to rule over the Greeks as an absolute monarch.

However, in the latter part of the third century another Hellenic league, which bears little resemblance to that of 337 B.C., was organized under Macedonian hegemony. This was the alliance which Antigonos Doson formed about 223 B.C. between Macedon and the federal states of the Thessalians, Boeotians, Epirotes, Phocians, Acarnanians, and Achæans, to which were afterward added Sparta and other states. The alliance rested upon treaties concluded by the individual states with Macedon, which respected the independence of these states, but placed certain restrictions upon their right of negotiation with outside Powers. The policy of the league was determined by a council presided over by the Macedonian king, but its decisions required the ratification of the individual states before becoming binding upon them. Obviously this league was nothing but a loose *symmachia*: its importance lies in the fact that it embraced all the important states of the Greek peninsula with the exception of the Ætolians.¹¹

Finally, we come to the federal states. These interstate associations are distinguished from the leagues and alliances by the fact that they gave rise to new states, characterized by a federal citizenship, alongside of which the citizenships of the several associated communities still existed. They were what the Greeks termed *sympolities* in contrast to the *symmachies*, where no new state was created. The cities united in the federal states remained locally autonomous; the rights and obligations of each were identical. On the basis of the federal citizenship, the federal organs of government were established—assembly, council and magistrates, modeled upon the institutions of the city-states. The federal state, through these federal institutions, had complete control of foreign affairs, including the right to make war and peace, the control of military forces, the right of legislation in federal matters, of jurisdiction in crimes against itself, the power to settle disputes among the federated states, the sole right of coinage, and the power to deal directly with federal citizens and not merely through the medium of their respective city-states.¹²

Such federal states were characteristic of political life in the peninsula of Greece from the fourth century B.C. This development was due to the growing realization that the isolated city-state was doomed to count for little or nothing in the political world. This was particularly true after the rise of Macedon under Philip II and the conquests of Alexander. From that time onward the territorial states dominated the situation.

In nearly every case the federal states arose on an ethnic basis, that is to say, they were associations of cities or rural states belonging to the

¹¹ Polybius, iv, 9 and 15; Niccolini, *La Confederazione Achæa*, pp. 55 ff.

¹² Upon the whole question of the Greek federal states I have followed Swoboda, *op. cit.*, pp. 208 ff.

same *ethnos*. This is shown in the adoption of the ethnic name to designate the federal citizens, *e.g.*, Bœotians or Achæans. At times indeed the term *ethnos* itself was officially employed in the title of the federal state, although a more usual term was that of *koinon*, which we might translate commonwealth. Later in their history many of these federal unions admitted communities of a different ethnic group to membership upon an equal footing with the old members, but in such cases the new citizens received the ethnic name of the group to which they were admitted. The true federal states of the fourth and third centuries B.C. were preceded in most cases by loose associations of their component city-states, either in the form of religious leagues, military alliances, or even confederations which were not true federal states. An example of the latter is to be found in the Bœotian Confederation which lasted from 447 to 386 B.C.¹³

The most famous of these federal states were the Achæan and Ætolian Confederations, which unfortunately are more usually known by the misleading name of leagues. The former of these two states owed its importance to the statecraft of Aratus of Sicyon, who induced it to embark upon a policy of expansion and opposition to Macedon which eventually brought it to include almost the whole of the Peloponnesus and even some states beyond the Isthmus.

It remains for us to consider which, if any, of these types of association among the states of ancient Greece may be considered as a forerunner of the League of Nations. The League of Nations, as I interpret its constitution,¹⁴ is a voluntary association of self-governing states for the purpose of promoting international peace and security. To this end these states agree to avoid secret preparations for war and to attempt to settle their disputes by arbitration before resorting to the verdict of arms. They also agree to respect and defend the territorial integrity and existing political independence of the members of the League.

Bearing these points in mind, I think that we shall find it exceedingly difficult to discover on Greek soil traces of any associations of states based upon the fundamental ideas of the League of Nations. The amphictyonies and other religious leagues had an entirely different basis and object. The federal states differed both in object and in organization. They are the historical antecedents of the United States of America, the Dominion of Canada, the Commonwealth of Australia, and the Union of South Africa, but not of the League of Nations. Perhaps we may say that there is a closer approach to the aims and constitution of the latter in the Pan-Hellenic program of Isocrates and the Hellenic League organized by Philip II of Macedon. Here, however, the qualification must be made that while this program and this league aimed to secure the preservation

¹³ The constitution of this confederation has come to light through the recent discovery of the *Oxyrhynchus Hellenica*, q. v.

¹⁴ See the prelude to the Covenant of the League of Nations, and article 1, *ibid.*

of peace in Hellas, they were organized also with a view to war against non-Greek states. Regarding the principle of arbitration, adopted by the League of Nations for the adjustment of international differences, we have noticed that it was employed very extensively by the Greeks but never under an organization such as that of this league.¹⁵

In conclusion, a study of the Greek leagues reveals the fact that the more important of them were only created and held together under the leadership of one state more powerful than the rest. The question suggests itself: Will the League of Nations fail unless some one powerful state or group of states is made responsible for the enforcement of its terms and has coercive power over the remaining members?

¹⁵ See M. N. Tod, *International Arbitration amongst the Greeks*. Oxford, 1913.

ENEMY GOODS AND HOUSE OF TRADE

By THOMAS BATY, LL.D., D.C.L.

Part II.*

THE TROIS FRÈRES (Stewart, V, Adm. Cases, N.S. 1). The continued adherence of the British courts to the doctrine of a *locus pœnitentiæ*, even for persons domiciled in a country which becomes an enemy, is here seen. A Frenchman became naturalized in the United States and traded there. Ultimately, however, he left, with all his books and papers, on a French ship for France, intending to remain there permanently. War supervening between France and Britain, the ship put about, with the intention of returning to America. But she was taken by the British, and the trader's effects seized as prize. Liberty was given him to establish, by affidavit, the total abandonment of his intention of going to France.

THE VIRGINIE (Feb. 7, 1804, 5 C. Rob. 98). Mr. Lapierre was a native of France, and carried on business in New York. Being on a visit of some ten months to (French) San Domingo, he shipped goods there from Bordeaux, and returned to America. There seems to be nothing to show a domicile, and not much to argue a house of trade, in San Domingo. Yet the property was condemned.

Stowell laid decisive stress on Mr. Lapierre's political allegiance; far more, I think, than it could bear. The judgment almost amounts to asserting that, where the allegiance and temporary residence are the same, any business with the country of that allegiance will be liable to involve confiscation. "The native character easily reverts," says Stowell, "and it requires fewer circumstances to constitute domicile in the case of a native subject, than to impress the native character on one who is originally of another country." Yes, but the early return to New York should have negatived the *animus manendi*; and Stowell really admits it when he says: "Had the shipment been made for America, his asserted place of abode, it might have . . . afforded a presumption that he was in St. Domingo only for temporary purposes." But the fact of his early departure not only afforded that presumption, but practically proved it. It is probable that a fuller report would have shown that there was no real and substantial business proved to have been carried on by Mr. Lapierre in America;

* The first part of this article appeared in this JOURNAL for April, 1921, pp. 198-231.

and the case would thus be an illustration of our principle that, if one's house of trade is under one's hat, it becomes highly important where one takes it.¹

THE VROW ANNA CATHERINA (II.) (May 15, 1804). The point was here strongly urged in argument by the King's Advocate and Dr. Laurence (combining for once), which we have already laid stress upon, namely, that we have no case in which, apart from enemy partners, privileged trade or post-war interference, domiciled neutrals established in trade in a belligerent country are considered to be affected *quoad hoc* with the belligerent character. The point seems to have weighed to a considerable extent with the court. The case was one of Dutch East India goods sold by the Dutch East India Company to one Vonte, a Dutchman, and undersold, with the property, to neutrals. Stowell held the transfer valid and *bona fide*. Then, was there anything to stamp a specially Dutch national character on the business and the goods? No; they were but the produce of the soil exported by the planter;² they were not protected by the enemy flag and pass, as ships may be; they were not engaged in a privileged trade in close touch with the government; and, we may add, the trade was not picked up during war, but a traffic made in contemplation of peace.

If the transaction is to be impeached, therefore, it must be on the ground that it is one of those transactions which have such a national bottom and substance, that, without consideration of peace or war, they are exclusively and radically and fundamentally a national transaction; and in which the man who engages in them assumes *pro hoc vice*, the character of that nation.³ Several circumstances approximate it to a Dutch transaction; for, unquestionably, there is a good deal of Dutch agency, and even of Dutch interest throughout; but is it so essentially Dutch that a foreign character cannot be predicated of it?

On the whole, the judge thought not.

It is important and helpful to notice the limitation put by Lord Stowell on the scope of the principle that the produce of enemy soil is enemy goods.

The produce of a person's own plantation, in the colony of an enemy, though shipped in time of peace, is liable to be considered as the property of the enemy, by reason that the proprietor has incorporated himself with the permanent interests of the nation, as a holder of the soil, and is to be taken as a part of that country, in that particular transaction, independent of his own personal residence and occupation.

This provides the answer to many of the conundrums that naturally arise as to the stage at which the produce of the soil loses its inherently

¹ Story disapproved of the decision: see *The Anne Green*, 1 Gall. 286.

² This is important; it provides a limitation to the scope of the principle that the produce of belligerent soil is belligerent. See *infra*.

³ As a *general* definition, not pretending to furnish any concrete tests, it would hardly be possible to improve on this statement.

dangerous character. Not manufacture, not export, is the test—but the fact of passing out of the hands of the grower.⁴

THE JONGE KLASSINA (Nov. 20, 1804, 5 C. Rob. 297). I shall not be suspected of a pun if I say that this is the classical case on the subject. Mr. Ravie was a merchant and manufacturer. He carried on business (seemingly without partners) at Birmingham, Warwickshire, and in Amsterdam. Probably the Birmingham business was mostly manufacture; the Amsterdam business mostly export and import. A British license given to him as "of Birmingham" to "import" goods from Amsterdam was held not to extend to justify him in "exporting" them thence. It is difficult to gauge the real reason for this decision. True, Mr. Ravie had an exporting business in Amsterdam, but surely he would have had to buy from *some* source in Holland, possibly from an exporting house, so why might he not procure the goods from his own establishment. True, the name under which he traded at Amsterdam "Ravie & Co." was used in the charter-parties; but names ought not to matter. Had there been Dutch partners in the Amsterdam house, the circumstance of the name might have been very material. But the mere fact that the importer Ravie, making his permitted import, happened to use the name of the exporter, who was the same person, ought not to alter the fact that Ravie was doing what he had been told he might do,—get goods in Holland and bring them home. That they were his own goods, ready for disposal in Holland to all customers, should not have affected the question. The government need not have given him a license; but having given it, they ought not to have evaded it by saying that they would look upon him as an exporter instead. That he was carrying on a Dutch house of trade need not be denied; but as a Dutch merchant he was *functus officio* when he handed over the goods to himself for import into England. The observations, however, of Stowell, on Mr. Ravie's national character are important. He supplies a kind of key to the enigmas which arise in these complicated cases of dual personality, by adopting a suggestion made by the King's Advocate (Nicholl) and Robinson in argument, that it is the place where the transaction *originates* that confers on the goods concerned in it a hostile character.

It is not said what is his native character, but it is much insisted on that he is settled in this country, and engaged in extensive manufactures here. Mr. Ravie must know, as those who have stated his case know perfectly well, that his meritorious establishment in this country, . . . cannot be permitted to affect this question. A man may have mercantile concerns in two countries; and if he acts as a merchant of both, he must be liable to be considered as a subject of both, with regard to the transactions originating respectively in those countries.

Stowell has thus taken the plunge and unequivocally adopted the doctrine of identification with, as distinguished from that of unneutral inter-

⁴ Of course, not absolutely. Cf. *The Hope* (27 June, 1809, 1 Acton 44).

vention in, the enemy's trade. We have seen that doctrine, as in a glass darkly, in the appeal case of *Zacharie, Coopman & Co.*⁵ We have seen Stowell apparently relying on the rival doctrine in the *Vigilantia* (1 C. Rob. 1), and we have seen counsel invoking it as a forlorn hope in the *Vrouw Anna Catharina (II)*. But the *Jonge Klassina* cuts loose from it. There is no question of post-war interference being important any longer. An innocent trader, established in trade in peace time in the enemy's country, becomes *quoad hoc* an enemy unless he puts up his shutters. To have a house of trade there is to be, so far forth, an enemy.⁶

The judge proceeds: "That he has no fixed compting house in the enemy's country will not be decisive; how much of the great mercantile concerns of this kingdom is carried on in coffee-houses. A very considerable portion of the great insurance business is so conducted."

This is a useful observation. When we assert that domicile, for the purposes of prize law, is ordinary civil domicile, the school of Westlake replies, "No; it is mere trading residence." When we ask, What is the use of treating trading residence separately, when having a house of trade is of itself enough to condemn? they say, in effect, "A house of trade means an establishment of bricks and mortar;" which, according to this case, is precisely what it does not mean.

Stowell remarks:

It is, indeed, a vain idea that a compting-house or fixed establishment is necessary to make a man a merchant of any place; if he is there himself,⁷ and acts as a merchant of that place, it is sufficient; and the mere want of a fixed compting-house there, will make no breach in the mercantile character which may well exist without it. Mr. Ravie's own representation is "that he went to Holland for the purpose of arranging his mercantile concerns, and that he has for a long time carried on trade and business at Birmingham." As to his business at Birmingham, I may dismiss the whole of that circumstance, as what cannot admit of a doubt. The question will still remain, whether he is not also a merchant of Holland, in this particular transaction? He says, "that he employs Mr. V. as his agent at Amsterdam, to receive letters,"⁸ and that letters are addressed to him there to Ravie & Company at Amsterdam." This circumstance has

⁵ This JOURNAL, April, 1921, p. 209.

⁶ This is, of course, very far from saying, as Lord Lindley did, with much applause in *Janson v. Driefontein Gold Mines*, that "the national character of a merchant in time of war depends on where he carries on his business." (1902) A. C. 499.

⁷ This is not an essential requisite, though it is common. It is, however, obvious that in practice, the local presence of the trader among the enemy exerts a great influence on the mind of the court. That it is not essential, is abundantly evident from the cases above noted.

⁸ This was in the height of the Napoleonic wars; yet correspondence with agents in Amsterdam was not apparently made the subject, by Stowell, of the slightest futile comment, much less stigmatized as treason. He alluded feelingly to "the difficulties in carrying on correspondence with the enemy's countries" in the *Juffrow Catharina* (March 13, 1804, *ibid.* 142).

been contended to be parallel with the case of Mr. Portalis, who had agents at Bordeaux, and at various other places, whilst he himself was residing at Neufchatel. But there is this distinction which has been overlooked,—that Mr. Portalis did not appear to have been personally present at Bordeaux; he might have agents in different parts of the world, but he himself was resident at Neufchatel. If he had been himself at Bordeaux, that fact might have made a very material difference in his case. What is the situation of Mr. Ravie in this respect? He says, “that he has employed agents at Amsterdam, except at those times when he finds it convenient to go there,” which may be three or five times in a year; at such times I am to suppose that he did not employ agents, but transacted his own business. What is meant by a nominal firm at that place, which I perceive in several passages of these affidavits, I am at a loss to understand, since Mr. Ravie appears to have been as substantially employed in the trade of Amsterdam, as any other mercantile firm of that place.

And in this particular transaction:

The charter-party is brought, not to Mr. V., his agent, but to himself, and he signs it as a merchant of Amsterdam. It would, I conceive, be too much for me to pronounce, that this can legally be done; or, in effect, that a man may go to the enemy's country as often as he pleases, under the authority of a license of this kind, and there act as a Dutch merchant, carrying on the export trade of that country.

This is clearly not Lord Lindley's principle that national character in time of war depends on where a person carries on his business. Personal presence and activity are evidently regarded as very important factors. We may gather from the observations of Lord Stowell that if the claimant had never gone personally to Holland, but had carried on an export business there by his agents, a more favorable view of the transaction might have been taken. This can only mean that in such a case it might have been held that his sole house of trade was in England, and that the Dutch export business carried on in Amsterdam was a mere branch of it. It is difficult to see any rational ground for the distinction; but it supports our proposition advanced above, that if business is carried on in the belligerent country by a principal or uncontrolled manager actually there, not being a business substantially limited to dealing with or through the neutral country with which the principal has paramount business interests,⁹ it will be very difficult to say that we have not to do with a belligerent house of trade.

Of course, the main question in the case is beside our present purpose. Given that Ravie had a status as an enemy Dutch merchant, the question of whether at the time of capture, he was acting as an enemy exporter or as a licensed British importer, is one on which two opinions may be held.

⁹ In the *Jonga Klassina*, the claimant had important business interests in England, but of course that only made the matter worse, as England was not neutral but hostile.

The main feature to be gathered from the *Jonge Klassina* is the prominence of the word "originating." Business, "originating" in the enemy's country, is enemy business. Yet, "originate" is not a conclusive word.¹⁰ If an agent has the idea of a transaction in Baratavia, and furnishes the notion to his principals in Utopia, who act on it as of course, does the transaction originate with him or with them? Supposing, again, that a permanent agent for the sale of English machines in Costa Rica obtains an order from a customer. Does not the transaction "originate" in Costa Rica? It does not appear that the idea of "originating" carries us very far.

The other outstanding feature is the weight attached to the (temporary but habitually recurrent) personal presence and activity in the enemy country of the sole proprietor.

PORTALIS' CASE. It is tantalizing to know that this case is unreported. Search of the records for the papers and the evidence would be well worth undertaking. Portalis was established in Neufchatel. He had agents doing (apparently) general trade in various countries, including Bordeaux. This was held, it would seem, in the early years of the nineteenth century, not to amount to the establishment of a house of trade by him in France.¹¹ It would be all-important to know how these agents and their business differed from Mr. Sontag's agents in *The Indiana*¹² and Mr. Ostermeyer's in *The Portland*.¹³ Was it because the Amsterdam and Ostend agencies had been at one time independent businesses, worked by the proprietors, Sontag and Ostermeyer, themselves? Or was it because the operations were all referable to Neufchatel. Scarcely the latter, as the citation of the case in *The Jonge Klassina* would have been devoid of point.

SIMPSON'S CASE (6 C. Rob. 127). This is only reported in the argument of Sir John Nicholl, LL.D., and Dr. Laurence, in *The Franklin* (*infra*). It was decided, apparently in 1805, by the Lords Commissioners of Appeals, and probably, as usual, under the impulse of Sir William Grant. Three brothers called Simpson were in partnership. The managing partner resided in America, and, presumably on this account, the house of trade was said to be "in America." Another resided in Scotland, and the third in London; and it may be taken that, as usual, residence means domicile. Goods were consigned to the enemy by the managing partner in London, but they were the goods of the partnership, and two-thirds of them were condemned. This determined that house of trade was a secondary criterion to domicile. The neutrality of the business does not matter if the personal domicile is hostile.

¹⁰ As regards this question of "originating," see per Dexter (arg.) and Story in the *San José Indiano*, 2 Gall. 279.

¹¹ See per Stowell in the *Jonge Klassina*, 5 C. Rob. 303.

¹² This JOURNAL, April, 1921, p. 220.

¹³ *Ibid.*, p. 221.

THE FRANKLIN (Diana, Master) (Sept. 13, 1805, 6 C. Rob. 127). Here, again, we have the personal domicile of Mr. W. Bell, living in England, operating to confiscate his share of tobacco belonging to himself and Mr. I. Bell, as partners, carrying on business in America. It is not a question of house of trade, except, indeed, that it might have been urged (as Wheaton, following Story and Marshall, put it in his *Elements*) that, if participation in an enemy house of trade was admitted to outweigh the neutral domicile of a claimant, *e converso* the neutral situation of his house of trade should be admitted to outweigh his enemy domicile. Such a principle would have disestablished domicile as a criterion of all mercantile property. It would have justified Lord Lindley's dictum that enemy character depends on where you trade; but, as Dana rightly comments, there is no inconsistency in condemning in both the cases advanced. Domicile among the enemy furnishes one mode of identification with enemy interests; trading among the enemy furnishes another. It may be reasonable to condemn a person's property on the ground of it being involved in enemy trade, without its being necessarily unreasonable to condemn it in spite of its being employed in neutral trade.

Stowell, indeed, seems to have inclined to Wheaton's view, and to have taken his doctrine from the superior court. "It has been decided by an authority to which this court must bow, that even an inactive or sleeping partner (as it is termed) cannot receive restitution in a transaction in which he could not lawfully be engaged as a sole trader" (*Scit.* on account of his domicile). Of course if he took (as Mr. W. Bell did) an active part in the business, the case was an *a fortiori* one. The case referred to seems to have been that of Simpson (*supra*), referred to in argument by the King's advocate and Dr. Laurence.

Briefly, to state the facts of *The Franklin*: I. and W. Bell were partners. I. Bell was resident, and apparently domiciled, in America. W. Bell was resident, and apparently domiciled, in London.¹⁴ The curious view is taken by the court that their partnership was (like Mr. Rave's commercial activity) not one house but two houses. There was the American house, "I. and W. Bell," and the English house "John and William Bell." Whether "I" (as is not unlikely) was the initial for "John," or whether "John" was originally the name of some other person, does not matter. Traders, like other people, can call themselves what they like. The partners were apparently the same, as, when the question of a severance *quoad* French business is mooted, it is only as between I. Bell and

¹⁴ The reporter's statement of facts states the cargo as claimed "as the property of I. and W. Bell, partners in a house of trade in America, and also 'of' a house in London, where Mr. W. Bell resided, but claimed as the sole property of I. Bell of America." "Of" must surely here mean "in"; the cargo was certainly not claimed as the property "of" a London house.

W. Bell that the matter is discussed. No other partners are even remotely indicated. We have, therefore, I. Bell and W. Bell carrying on business in common under slightly different styles in England and America. It seems, to the present writer, like one business. But the judgment is an authority for the proposition that separate and independent accounts, if coupled with the presence of a partner or "uncontrolled manager," will create a separate house of trade, if general business is originated by the persons in charge.

I. Bell, in America, shipped 70 hogsheads of tobacco from Petersburg, in Virginia, for France; it was documented as, and even sworn and found to be the property of I. and W. Bell. Captured at sea, one-half of it was confiscated as the property of a domiciled British subject, trading with the enemy.

It will be seen that this case raises all the elements of doubt as to what constitutes a house of trade which have perplexed us from the outset. Here are two people carrying on business together; independent accounts are kept, and different styles used, at two different centers,—one partner attends to the one, and another to the other. Is it a house of trade in London? or in America? or in London and America? or is it (as seems to be assumed) two houses, one in each country?

The case furnishes the same kind of negative evidence as we have once or twice observed before, as to what does *not* constitute a house of trade. The whole concern might conceivably have been held to have been an English house, carrying on business by a partner in London, and maintaining an American branch, worked by a partner instead of an agent. In that view, I. and W. Bell would simply be the name by which "John and William Bell" of London were known in America. An international partnership of this kind, consisting of a series of ganglia rather than of a head and limbs, might well be regarded as a house of trade established in any of the countries where it has a nerve-center. However, Mr. I. Bell was not regarded as generally affected with the British character. No one would suppose that he was, merely because he carried on a certain business in London; but the point is, that his London partner also carried on business with him in America. How was it possible to separate the American and the British elements of the joint enterprise? It might be easy in the majority of cases. But suppose I. Bell, in Virginia, wrote to a customer in Liverpool selling him tobacco, and authorizing him to call upon William in London for delivery out of the stock of "John and William Bell." As a partner in that firm, he would be perfectly justified. Would the goods, in the transit from London to Liverpool, be the property of the London "house," or the Virginia one? I. Bell has picked them out of the orbit of the London business and put them in that of the Virginia one. So at least it might be argued. And such perplexities must be frequent,

so long as we try to regard the business carried on by a person or firm as two or more businesses.

THE ELEONORA WEILHELMINA (Feb. 27, 1807, 6 C. Rob. 331). This is a minor case; but shows how important the ordinary civil domicile is in estimating national character. Stowell here declared that "Till I am better instructed, I shall hold that the national character of a man who has only just quitted the Prussian navigation, and has his wife and family still resident at Pillau (in Prussia), cannot fairly be considered 'as of the people of Russia,' " although he was master of a Russian vessel and had taken out a Riga "burgher's brief." Evidently the judge agreed with the King's Advocate and Dr. Laurence that "his domicile was still at Pillau."

THE JONGE RUITER (1 Acton 116). Here the claimant had a personal home in Papenberg (a favorite cloak for hostile commerce), where his wife lived and where he sometimes spent half the year himself (being at sea for the rest of his time). It was held he was domiciled there, and that his neutral character was not forfeited by his constant trade with the enemy country (1809). This leniency may usefully be compared with *The Susa* (1799, 2 C. Rob. 251), and *The Jonge Emilia* (1800, 3 C. Rob. 51). The case shows that repeated voyages to a belligerent country are not in themselves sufficient to impart the belligerent character to a shipping venture; they must be coupled with privilege or with the association of enemies in the business, as by repeated charters to enemy merchants.

THE ELIZABETH (16 May, 1811, 1 Acton 57). This case is just cited for counsel's observation that "although the claimants [who had removed from Trieste, on the French occupation, and gone to Vienna] might be accredited persons with the Austrian Government at Vienna, they might yet have an establishment of some commercial kind 'or even a house of trade' at Trieste also." This shows that a house of trade is not synonymous with a commercial establishment.

THE ANN (Feb. 19, 1813, 1 Dodson 221). This is the best deliverance we have on the subject from Lord Stowell. Mr. Smith, a native of Scotland, where his family still resided, went, about 1795, to America and was naturalized two years later. From 1799 to 1805 he was connected with a Glasgow "house of trade" which had "establishments" at New York and Charleston, at each of which places he occasionally resided. His connection with this firm seems to have ceased in 1805, but some time afterwards he bought *The Ann*, an American ship, sailed her twice to Jamaica, and then to London, where she was captured in 1812.

On the principles we have seen laid down in *The Vigilantia*, etc., he had clearly identified himself with America. His "house of trade" was certainly nowhere else. But a difficulty was created by the language of an Order in Council (Nov. 28, 1812), directing that vessels under the flag of the United States, *bona fide* the property of His Majesty's subjects,

of certain specified categories, should be restored to their British owners.¹⁵ It might have been sufficient to say that it was not because he was under the American flag, but because her owner was identified with American trade, that the ship was libelled. The Order in Council could not have been meant to protect ships under the American flag which were confiscable on another ground, *e.g.*, for carrying of contraband. Stowell took the rather different line of declaring that Smith was not a British subject *quoad hoc*. He could not shake off his allegiance, but "for mere purposes of trade"¹⁶ he might acquire a new national character. And "when the vessel is American-built, when the personal residence of the owner, as far as he has any, is in America (for it does not appear that this man at all resided in Scotland), it would be difficult to say that it could be any other than an American transaction." In short, Smith had cut loose from Scotland, except for his lonely wife and family. To the ports of Scotland he never sailed, nor does it appear that he even visited his wife and family in that country. He has been sailing constantly out of American ports. It is not the mere circumstances of having a wife and family in Scotland¹⁷ that will avail him for the purpose of retaining the benefit of his national character for commercial purposes and, incidentally, for prize purposes.

THE ANN GREEN (Oct., 1912, 1 Gall. 274). Joseph Story here fully adopted the principle of domicile (permanent residence) as the grand criterion. Cullen shipped rum from Jamaica to Canada (prior to the War of 1812). He was a British subject, domiciled in the United States, but he made the shipment after an aggregate of four years' stay in Jamaica, and avowedly in the character of a British merchant. Story, calling *The Virginie* "rather strained," held in effect that Cullen had not a house of trade in Jamaica, he made the shipment without being engaged as a general merchant; nor was he domiciled there. So that "although the native character easily reverts," as he agreed, the temporary purpose (debt-collecting) with which Mr. Cullen went to Jamaica, prevented his regaining a British domicile. His rum was meant to liquidate his debts in New York, not to make money. It is impossible not to see that Story was much more lenient here than Stowell had been in *The Harmony*, *supra*, and *The Dree Gebroeders* (4 C. Rob. 232).

Cullen was a Scotchman; came to New York about 1795, at ten years of age; was naturalized in 1804; became a partner of a New York firm in 1807, and went debt-collecting in Jamaica half a year in 1808, about a year in 1810, and from October, 1811, on.

¹⁵ This was a very common practice. It was, I think, begun on the occasion of war with Prussia in 1806 and repeated on various occasions when neutrals became enemies. Cases under the Order in Council in the Prussian case are in the London Record Office, 170 *Privy Council Registers*, 535 (July 2, 1806); and for the American order see 193 *ibid.*, Nov. 28, 1812.

¹⁶ Not "by mere acts of trade."

¹⁷ Cf. *The Harmony*, 2 C. Rob. 325..

THE FRANCES (Feb., 1814, 8 Cranch 335). Here Story held that a merchant, domiciled in an enemy country retains that character until he actually removes. He thinks that the note to *The Ocean* (5 C. Rob. 91), and *The Osprey*¹⁸ prove this. One can only respectfully disagree.¹⁹ Robinson's note only shows the precariousness of relying on intention *merely*.

Mr. Gillespie was born at Glasgow, went to the United States in 1793 and was naturalized in 1798. Next year, he married in Scotland, came to New York with his wife, returning with her in 1802. In 1805 he returned to New York and went into partnership with one John Graham. It was agreed that he should do its business in Britain (as Colin Gillespie & Co.) and that Graham should do it in New York (as John Graham & Company). Mr. Gillespie went to Scotland and accordingly set up "his" house of trade and resided there, not doing general, but only American business, "receiving" consignments of American produce, selling the same and purchasing goods in that market to ship to the United States. Consequently, one would have thought there was one house of trade, and that American, and that only Gillespie's share would have been confiscated. However, the court saw two houses, and condemned the whole shipment as the property of the enemy house.

THE FRANCES (Thompson's claim) (Feb., 1814, 8 Cranch 335). Here, a naturalized American, who set up a house of trade (but not, according to his own account, a domicile *animo manendi* in Scotland, was held to have "acquired a domicile" in that country (which was his native country). It would have been sufficient to hold that he had a house of trade there; and the case would stand alone in attributing to an individual a domicile without *animus manendi*, were it not for the fact that his intention to return rested solely on his own declarations. That is obviously insufficient; and the case is thus reduced to an ordinary one of domicile, similar to *The Venus*, *infra*.

It is necessary to state the claimant's commercial position. He appears to have been in partnership in America with domiciled Americans; then, in 1801, to have gone to Europe, on the business of the firm (called "his house"). In 1803 he settled in Glasgow, and carried on, up to the War of 1812, and even after its commencement, "that part of the business of the partnership which was to be transacted in Great Britain." Until we know what that business was, we can hardly see in this anything more than an American house of trade, doing business in Scotland through a partner. The partner's share was condemned evidently on account of his domicile *animo manendi*. The shares of the parties domiciled in America were restored. The fact that Thompson did eventually return to America was immaterial.

¹⁸ This JOURNAL, April, 1921, p. 209.

¹⁹ In the *S. Lawrence* (1815, 9 Cranch 120), Story himself still treats the question of withdrawal as an open question.

GILLESPIE'S CLAIM (Feb., 1814, 8 Cranch 363).²⁰ Here great stress was laid on the element of time. In response to detailed questions on further proof being made, it appeared that the claimant had been eight years carrying on the business of a partnership with J. Graham of New York, that his residence in America had been casual and infrequent, and that he had married in Scotland. Held: he had a Scottish domicile. It is clear, from the inquiries so prosecuted, that mere trading residence in Scotland was not of itself sufficient.

THE LOUISA (1814, Inner Temple Folio Prize Appeals [1812-15], fo. 115): Here a Venezuelan went to the States for reasons of health, and embarked on sporadic trade there. His wife and family remained at Caracas, and he only made three shipments altogether. The third, a considerable cargo of indigo, hides, chocolate and provisions, was despatched from an American port, but captured by the British. The Lords Commissioners of Appeal restored it, on appeal. Lushington and Brougham argued for the claimant (Vicente Rodriguez) that he was

a neutral Spanish subject whose national character by birth and domicile is Spanish and whose temporary residence in the United States had no connection with commercial purposes,—but having originated in impaired health was subsequently prolonged against his inclination by a continuance of the same calamity and the prevalence of revolutionary conditions in his own country, which reduced him to great distress and rendered his immediate return impracticable.

The king's advocate (Robinson) and Garrow argue *contra* that

matters of commiseration are difficult. But the question is not whether an alien away from home is not an object of pity. He was settled in the United States, and charters *The Louisa* for a voyage originating and terminating in America. He was living in the United States as a *merchant*, keeping his character [as such] open.

There is a MS. note on the record, "The question will turn on this: was he so abiding in New York as to have lost his original and national Spanish character, and ought he to be considered with reference to this transaction as an American merchant?" This may be a note of some remark of the judges, or a mere note by counsel for the proctor or client. It is neither very useful nor very accurate.

In the result, the Lords of Appeal must have held that he was not domiciled in New York, which is clear, and was not carrying on a house of trade there, which is less clear, but not inconsistent with authority, considering the very few commercial transactions involved in his American career.

This interesting case is nowhere reported.

²⁰ See *The Frances*, *supra*.

THE SAN JOSÉ INDIANO (Oct., 1814, 2 Gall. 268). This case²¹ throws as much light as any on the national character of partners operating in various countries. And it distinguishes pretty clearly between trade and domicile. Here, Story is in entire harmony with Stowell in declaring that "The residence of a stationed agent in the enemy's country will not affect the trade of the neutral principal with a hostile character, yet this is true only of the ordinary trade of a neutral as such, carried on in the ordinary manner. But where such trade is carried on, not on the footing of a foreign merchant, but as a privileged trader, or *by an incorporation with the general commerce* of the enemy in the same manner, and with the same benefits, as a native merchant," it is taken to be hostile.

The unfortunate thing is, that it is left vague by both luminaries, what is the footing of a foreign merchant—the ordinary trade of a neutral, the general commerce of a country! Let us see if we can gather any light from the concrete facts: Britain was hostile; Portugal neutral. There were many claims, analyzed into three classes:

1. Houses in both Portugal and Britain.²² Same partners.
2. Houses in both countries with some common partners.
3. House in Portugal, one partner doing business in Britain.

In the first case, we need to consider that there were "two houses," Dyson Bros. in England, and Dyson Bros. and Finney in Rio. But these had exactly the same partners. The property was going from "the house" in England to "the house" in Rio. In short, it was the property of a partnership which carried on business in the enemy country, if in Rio also. Where the preponderance of business was, and whether either center took up general business or not, we do not know. But it seems to be implied in Story's judgment that the English house was, or might be, the preponderant one. Two persons called Dyson, domiciled in England, and one J. Finney domiciled in Brazil, composed the partnership; and of course two-thirds of its goods were condemned on the ground of personal domicile. But was Finney's share involved? Yes, said the captors, the goods had been shipped at the account and risk of an English house of trade.

Said Story, J.:

It is very clear that, in general, the national character of a person is to be decided by that of his domicile. . . . But the property of a person may acquire a hostile character, altogether independent of his own peculiar character derived from residence. . . . The origin of the property, or the traffic in which it is engaged, may stamp it with a hostile taint, although the owner may happen to be a neutral domiciled in a neutral country.

²¹ The only one (it seems) in which an enemy by allegiance was treated as neutral, until we come to *The Abou* in the Crimean War.

²² These terms are used shortly here to indicate the Portuguese and British dominions respectively, the former including Brazil.

Story thus clearly distinguishes domicile from trading, and implicitly condemns the idea of a specifically "commercial" domicile (except as a convenient phrase to denote the domicile of a person who happens to be a trader). He proceeds to instance entanglement in the privileged trade of the enemy, and the continued use of a vessel in enemy commerce. Such a trade, he adds, has a direct and immediate effect in aiding the resources and revenue of the enemy. It subverts his industries; it affords him taxable objects. Now here was a house of trade, established by British subjects in British territory, and habitually and continually carrying on British trade.

It is true one partner is domiciled in the neutral country; but for what purposes? *For aught that appears, for purposes exclusively connected with the Liverpool establishment.* At all events, the whole property embarked in its commercial enterprises centers in that house, and receives its exclusive management and direction from it. Under such circumstances, the house is as purely British in its domicile (if I may use that expression) and in its commerce, as it could be if all the partners resided within the British empire.

This needs close analysis. The whole judgment appears to be colored by the conception of the Liverpool and Rio businesses as two independent entities, each carrying on a business sufficiently general to enable it to be represented as something more than a mere aspect of the activities of the other. But there are great difficulties in reading Story's language consistently with this supposition. He uses the phrase just quoted, "*its commercial activities*"; and the supposition in question would require "*it*" to mean "the Liverpool establishment." But he has just been speaking of an entity which *had* a Liverpool establishment; not of the Liverpool establishment itself. So that one would think that he referred to the partnership as an undivided whole. Again, it is rather redundant and futile to say that the property embarked in the enterprises of a house has a particular connection with that house; so one would again think that he was referring to the enterprises of the whole partnership, and was declaring that, though it carried the establishments at Liverpool and Rio, its property "received its exclusive management and direction" from the Liverpool center, and was thus affected with a British character.

It seems certain that Story's language is rather confused. We cannot be sure whether or not we have here a case of our proposition that when the preponderant management of a business is in one country, the mere fact that it does business (unless of a general character) in another, and even has a resident partner attending to it, will not make it anything but a single house whose character will be belligerent or neutral according to the character of the place of its preponderant activity; and its "house" or "establishment" in the minor center will be held to be a quasi-agency only. It may be that it is a mere case of the simpler proposition that when

one partnership (or person) carries on two general businesses in two different countries, their national characters will be kept distinct, but the residence of a partner or proprietor in the neutral country (or indeed in any other neutral country) will not exempt his share. It is a pity that we cannot be quite certain on the point, as the former case, though the less probable, is by far the more interesting.

Story recognizes that it is a new fact not found in Stowell's cases, that here we have a shipment from a house in the enemy's country indeed, but made to its connected house (and indeed to itself) in the neutral country. But he thinks that makes no difference. As a shipment made by a house in the enemy country on a voyage originating there, the goods must be condemned *en bloc*, without exemption of neutral interests. That would, of course, be so, whether the court saw in the transaction one entity or two. For the starting of the transaction was with the hostile one.

But now comes the second case where the houses differ in composition and an enemy house ships goods to a domiciled neutral partner or to his neutral firm there, and case three where a partner domiciled in the enemy country ships goods of its manufacture to his neutral firm [on its account and risk]. If, in the second case, the shipment by the enemy firm be on its own account, the recipient neutral partner or firm is only its agent, and "the property, in its origin, transit and return, is thoroughly imbued with the enemy character." So in the third case, if the partner in the enemy country is "really engaged in the general commerce of the country for the exclusive benefit of his neutral house," he is simply carrying on a general enemy business for *them*.

The captors, however, argued that a shipment from an enemy country was confiscable, if made to an individual partner domiciled in a neutral country, and for his account and risk.²³ This, Story considered would be to go too far. Transactions do not "originate" in a country when they are originated by mere agents there. And a shipment made by a partner or agent domiciled in the enemy's country to his neutral house as principal, on its exclusive account is equally exempt.²⁴

Another shipment was made by a Manchester firm to Turner, Naylor & Co., Rio, on the joint account of both firms. The share of the Manchester firm was condemned, also one-third of the Rio firm's (which had one out of three partners domiciled in England). So far, good; but another ship-

²³ Or to a neutral house on the like terms. There is some confusion in the case of Dyson. The goods are said to be shipped on account of the Rio house (p. 284) and on account of the English house (p. 289).

²⁴ It is difficult to see, therefore, why (p. 298) the claim of a Rio house of Heyworth should have been rejected. The shipment is made by a house at Liverpool, composed of the same persons as the house at Rio to which it is consigned, and is upon the account and risk of the Rio House. "The case . . . falls directly within the decision" in the case of Dyson and the claim must be rejected. Perhaps "account and risk of the Rio House" ought to read, "account and risk of the Liverpool House."

ment to the same firm at Rio was sent by the order and at the account and risk of the Rio house by J. & J. Naylor of Wakefield. John Todd Naylor was a common partner of both firms; two-thirds were restored, except as regards a piece of stuff which did not appear to have been ordered from Rio, and was condemned. But "there appears . . . such an intricate relation both in blood and business, between the house at Wakefield and the house at Rio," that the judge ordered further proof as to the general connection in business between the two houses, and the terms, manner and circumstances under which those and other shipments had been made. This is difficult to understand, for he had ordered restitution to the neutral partner in the Dyson case, where the partners were precisely the same in both neutral and hostile houses, and could not well be more closely connected.

Then there was an interesting claim by P. F. Archango Dos Querubens, Procurator-General of the Religious Order of St. Antonio. This shows that cargoes do not (as Westlake once unguardedly argued) involve trading and merchants. The shipment was, however, so much mixed up with the goods shipped by Messrs. Naylor on their own account, that further proof was ordered.

We revert to sober commerce. March Bros. & Co., of Rio, had a partner described as "of Liverpool." Although not apparently trading there, his share of the shipment to the firm was confiscated.

With regard to the shipment to Seaton, Plowes & Co., a curious rule is applied, which presumes that in such a case "there are at least three partners entitled to equal shares:" Seaton was "of London," "Plowes of Rio," and two-thirds were leniently restored.

The next case is a house within a house. The partners in William Harrison & Co., Rio, were William Harrison of Rio and "the house of A. and R. Harrison & Latham of Liverpool." All parties in the latter house were domiciled in England; so a quarter was restored (*n.b.*, not a moiety).

Francis Sommers of Rio, and the Rev. John Sommers of Mid-Calder, made a shipment on joint account. "If Mid-Calder be, as I presume it is, in the north of England, a moiety must be condemned."

So far we have come across nothing to contradict the conception of domicile firmly held by Stowell. Permanent residence is the essence of it. A "commercial domicile" would have had no meaning for him, except as synonymous with "the domicile of a commercial man."²⁵ Trading is no necessary element in the acquisition of a national character. All that can be said is that if a man sets up business in a country, he is not unlikely to stay there. But we shall now find a case, in America, in which the

²⁵ Dexter puts the point neatly in the *San José Indiano*: "The question is simply as to the commercial character of the claimants. *It is personal, and does not relate to the branch of trade they are engaged in* (p. 277)."

criterion is attempted to be shifted from residence to trading, at any rate by counsel; while Chief Justice Marshall's inexplicable invention of a "commercial domicile" lends color to the same idea. Did Marshall, by "commercial domicile" mean simply the conception of house of trade, independent of residence, or did he have in view residence coupled with commercial activity in the same place? It strikes the investigator that what was really in his mind was an attempt to preserve the single term "domicile" as the criterion of enemy character, whilst including in it (1) true domicile and (2) commercial domicile (i.e., house of trade), in which latter case it is the *business* which (so to speak) is "domiciled" in the hostile territory. Thus, Story J., in the *San José Indiano* alludes to a "house" as being "purely British in its domicile" (if I may use that expression). And Gaston, in argument, in *The Antoine Johanna* talks of a house having a "domicile." And again, "There must be an *animus manendi* to constitute domicile," says the same Dexter in the *San José Indiano* (1814, 2 Gall. 279).²⁶

THE VENUS (March 12, 1814, 8 Cranch 253). This case by no means supports the proposition for which Halleck cites it, that a person *domiciled* (as distinguished from *resident*) in the enemy's country, cannot safely withdraw with his goods on the outbreak of war. All that it decides is that, as long as such persons remain in fact, their property is affected by their actual locality. This is seemingly inconsistent with the leniency shown in *The Ocean*, as will be apparent when we state the facts; but probably it can be reconciled by remembering that the party in *The Ocean* was forcibly detained by the enemy.

Maitland, McGregor & Jones, naturalized Americans, went back to Great Britain and established a "house of trade" there (see per Pitman, *arguendo*, p. 255). But the case does not seem to have concerned the property of that house. Before the outbreak of the War of 1812, they, individually, domiciled in Liverpool, shipped goods to England, asserted to be their joint property in varying shares. The ship was claimed by Maitland and one Lenox, together with considerable cargo. Much of the cargo was claimed by Maitland, Lenox and McGregor, a little for McGregor alone, and a quantity for McGregor & Jones. The goods can hardly therefore be said to be very obviously connected with the house of trade, in which Maitland, McGregor & Jones alone were partners. The case seems to rest on their individual domiciles. Unfortunately the court does not distinguish clearly between domicile and trading. Carried away by the fact that a merchant generally trades where he lives, they occasionally use language which confuses the two conceptions, and gives color to the notion that trade is an essential constituent of prize domicile; thus blurring the two criteria of house of trade and domicile.

²⁶ See also Twiss, *Law of Nations*, II, 306; Pitt Cobbett, *Leading Cases in International Law*, I, 209.

Washington, J., in his leading opinion, gives countenance to the Westlake-Lindley theory that domicile for prize purposes means something short of civil domicile. He adopts Vattel's definition, "a habitation fixed in any place, with an intention of always staying there." He does, however, undoubtedly limit the effect of domicile, by apparently cutting down the liability to confiscation to goods both connected with the place of residence (domicile) and concerned in the trade of the enemy. This is really to adopt as the test of confiscability domicile plus a house of trade. As such it is quite irreconcilable with British theory, which condemns all the goods of a person domiciled in the enemy country, wherever trading (the *Franklin*), and those of a person carrying on a house of trade there, wherever domiciled (the *Jonge Klassina*). Washington seems to repudiate the *Franklin* doctrine, treating domicile, as he does, as the sole test; but he does not appear to have noticed that he was adding to that sole test an additional requirement, *viz.*, that the trade should be carried on in the country of the domicile. He assumes, very naturally but quite gratuitously, that the person is carrying on trade where he is residing permanently. Actual removal, or "bona fide beginning to remove," on the outbreak of war, he expressly says, will change the national character. So that he explicitly allows, instead of contradicting (as Halleck would have it), the position that the person with an enemy domicile may safely quit²⁷ on the outbreak of war. But if the party remains in fact, he must expect unfavorable inferences. And if he waits until his property is captured before taking any decisive steps, he cannot snatch it out of the hand of the captor by subsequent determinations. "The character of the property, during war cannot be changed *in transitu*, by any act of the party, subsequent to the capture." And this, whether the doctrine of *The Danckebaar Africaan* (1 C. Rob. 107) be accepted or not, that it cannot be changed at all.

Story agreed with Washington, though in no detail; and Marshall (I believe, rightly) thought that the claim based on mere intention to return to the country of one's political allegiance ought to prevail. Grotius had placed the identification of a person with the belligerent on his permanent residence.²⁸ Vattel had done the same. Marshall accepts this test, as laid down by Vattel, and we cannot doubt that he meant to accept it *ex animo*; but in his preliminary skirmishing, he does speak of "a merchant residing abroad for commercial purposes," and "intending to continue in the foreign country . . . providing his commercial objects shall detain him [until a hypothetical event]." Clearly such a residence, meant to come to an end with the completion of particular business, falls short of domicile. But Marshall is not defining the test of enemy character. He is

²⁷ Unless, perhaps, of enemy political allegiance.

²⁸ P. 282. "All the subjects of the enemy who are such from a permanent cause . . . are liable to the law of reprisals. . . . Not so, if they are only trading or sojourning for a little time."

merely instancing a common case as introductory matter. When he gets to definitions, he is quite clear. "A domicile then, in a sense in which this term is used by Vattel, requires not only actual residence in a foreign country, but 'an intention of always staying there.' Actual residence without this intention amounts to no more than 'simple habitation.' " And he proceeds in the strongest terms to deny that mere residence confers the national character. "The intention which gives a domicile is an unconditional intention 'to stay always.' "

What his judgment really amounts to is, not (as Westlake would have it) that one can easily acquire a so-called "commercial domicile" which will give one an enemy character, but that a foreign merchant's residence, contingent, as it must be presumed to be, on the continuance of peace between the two nations, can never amount to domicile at all, unless conclusively proved by his staying in spite of war. This doctrine must surely be erroneous,²⁹ but whether right or wrong, it obviously affords no support to the notion that prize-law domicile is different from civil-law domicile, and is more easily established. Marshall admits that "less conclusive evidence than would seem to be required in general cases, by the law of nations, has been allowed to fix the domicile for commercial purposes." This may have been the case. But he declared that the nature of domicile for prize purposes remained unaltered; it still meant essentially permanent residence, and it does not appear that any of the other judges disagreed with this, or with its applicability as the test of enemy character. What he objected to was the presumption (p. 296) that a merchant of one country settled in another is intending to remain there always. That such a presumption exists is clear (*The Bernon*), that it is reasonable is fairly plain, and it can be rebutted. To stigmatize a domicile based upon it as a "commercial domicile," created by the mere fact of residence coupled with trading, is a potent fallacy. Marshall uses the term "commercial domicile" to mean a true domicile *presumed* (and perhaps often unjustifiably presumed) from the facts of residence and trading.³⁰ Those who rashly cite him in support of the assertion that national character depends on trading residence, use it to mean a new-fangled "domicile" created by trading residence.

We may note that Dexter, in argument, squarely stated that residence plus trading constitutes domicile. This is entirely without support from any decision, nor is any cited. Of course, trade is enough of itself to condemn one's goods without residence.

It is of some importance to note the careers of the parties. McGregor came to America a minor; and, after embarking in business, naturalization,

²⁹ The specific event of war is not necessarily contemplated by merchants when taking up their residence in a foreign country.

³⁰ His whole argument is that such a presumption is inapplicable in the event of war.

marriage and purchase of real estate (residing for twelve years in New York), he went back to Great Britain and in 1805 began business in Liverpool. Says Stockton, *arguendo* (p. 261), "His employment was that of an American merchant shipping goods from England, and receiving American produce there to sell on commission;" and he rightly observes that McGregor's own goods could not be affected by his having English partners. He thus makes the ingenious attempt to represent him in his several capacities, as an American locally in England, but carrying on an essentially American trade. I am not quite sure that the plea would not have succeeded before Stowell. It was not until he sent butter to a strange country, Portugal, that Stowell viewed Grant's proceedings in a serious light in *The Dree Gebroeders*. As above stated, McGregor returned to America ten months after the capture (p. 270), and his delay clearly justified the court in condemning his goods.

Lenox and Maitland had their house of trade (J. Lenox & W. Maitland) in New York, where both were naturalized and held real estate. Lenox remained in New York, but Maitland went to England in July, 1810. In 1811 he took a counting-house at Liverpool and carried on business as "W. Maitland & Co." for himself and his partner Lenox. Were there then two houses, or one house, and were they American or English, or both? It would seem plausible to say that one house alone subsisted (under different names), and that it was essentially an American house. Maitland's share might be confiscable through his personal domicile, Lenox's share for his fraudulent conduct (see p. 276). Maitland was still in England in April, 1813, the capture having been on August 6, 1812. The court, however, seems to have regarded the partnership as a different entity when operating in England from what it was when operating in America. Unlike *The Herman* (4 C. Rob. 228), we have, as in *The Franklin*, a case where the partners are precisely the same; and their English business may have been of a purely American texture, but (seemingly) not confined to the receipt and marketing of goods forwarded by their own American establishment. They had taken up the position in England of English merchants doing a general American trade.

On the whole, it appears an irresistible conclusion that the American court had not quite succeeded in separating the radically different conceptions of domicile and house of trade. They appear to confuse the two, and to assume that where the one is, the other must be also. Harper, indeed, *arguendo* (p. 267), attempts to substitute trading for time as the criterion of what should constitute domicile!³¹

It appears to be to this case, with its failure to distinguish domicile

³¹ And, in *The Frances*, he says plainly, "It is the nature of the trade, not the place of residence, which determines the hostile or neutral character of the trader." (8 Cranch 369.)

from trading, that the subsequent confusion is to be attributed.³² We shall consider ourselves absolved from going at length into the modern cases, and shall only cite one as typical (*The Aina*, *infra*).

SOCIETY FOR THE PROPAGATION OF THE GOSPEL V. WHEELER (October, 1814, 2 Gall. 130). The strongest possible repudiation of the idea that domicile for prize-law purposes is a "commercial domicile" dependent on trading, is found in the present case, decided seven months after *The Venus*, and after full opportunity of discussion. And the judgment is by Story, whose language in *The Venus* and *The Frances* is thus seen to have reference solely to the facts of those particular (mercantile) cases.

A neutral, or a citizen of the United States, who is domiciled in the enemy's country . . . is deemed as much an alien enemy, as a person actually born under the allegiance and residing within the dominions of the hostile nation. . . . And the same principle has been applied to a house of trade established in a hostile country, although the parties might happen to have a neutral domicile; . . . But it is not the private character or conduct of an individual, which gives him the neutral or hostile character. It is the character of the nation, to which he belongs and where he resides. *He may be retired from all business*, devoted to mere spiritual affairs, or engaged in works of charity, religion and humanity, and yet his domicile will prevail over the innocence and purity of his life.

This is conclusive that domicile, for prize purposes, does not mean trading residence.

THE ELISIA. (Inner Temple Folio Prize appeals [1813-14] fo. 472.) The advocates of the theory that place of business is everything in war must find considerable difficulty in the case of *The Elisia* (now for the first time, like *The Louisa*, made public). The owner of ship and cargo (one Davis) was a subject of King George III, and regarded himself as domiciled in Ireland. But his commercial center was certainly nowhere in the United Kingdom. Being at Lisbon early in 1810, he bought an American vessel, got a Papenberg register for her, and christened her *The Elisia*. He went to Waterford in her, and loaded glass for America, proceeding

³² *Murray v. The Charming Betsy* (February, 1804 2 Cranch 64). This is the case which probably became the innocent cause of the unfortunate expression "commercial domicile." An American non-intercourse act was held not applicable to a person domiciled and trading in Danish territory. Obviously a just decision, if a lenient one, but having no bearing on the subject of prize. For the whole object of the act was commercial, to discourage commercial intercourse between America and France. The whole act being directed to trade, his place of trading was supremely important. The personal domicile was quite immaterial.

Shattuck, the claimant, had done all he could to make a Dane of himself, having even become naturalized. In these circumstances Marshall, C. J., declared that domicile abroad may confer the commercial privileges of the place. But he nowhere says that only "commercial" domicile can confer the character of the place.

The interesting case of *The Constant* is cited from *Camyne Reports* (677). (*Scott v. Schwarz*.) English subjects domiciled in Russia were held to be Russians for the purposes of navigation acts. They were "of that country or place."

thither with that cargo. Subsequently, the ship voyaged to Ireland with naval stores, and back with glass and whiskey. She then went again to Ireland, and proceeded to Lisbon and St. Ubes, returning to America; and lastly performed another journey to Ireland and back. War between the United States and the United Kingdom having then broken out, Davis "determined to quit that country" where he was apparently established meanwhile, attending to these various shipments. He loaded *The Elisia* with what property he could collect, and she started for St. Bartholomew, during which voyage she was taken by *The Statira* and *Æotius* as American property.

Davis deposed that he only went to the United States "for convenience," which must surely mean business convenience, and the court, if it had held that the place of business was decisive and that domicile in prize law meant trading residence, must have told him that his civil domicile, even if Irish, did not matter. But the Lords of Appeal (1815) restored him his property, in spite of its American origin, in spite of the master's and supercargo's deposition that he was still living in Bath, U. S. A. The case seems, therefore, a strong authority, like *The Louisa*³³ (and to a certain extent *The Harmony*) that it takes more than a few isolated acts of commerce to constitute a house of trade, even if there be personal presence in the enemy country and no house of trade elsewhere.

THE MARY AND SUSAN (II) (1816, 1 Wheat. 46). In a note to report of this case (p. 54), Wheaton develops the doctrine of so-called "commercial domicile." He squarely defines domicile as "commercial inhabitancy"; thus effectually mixing up the ideas of house of trade and domicile. The strange thing is that he never speaks of domicile as "commercial inhabitancy" in his *Elements*,³⁴ nor does he fail there to distinguish accurately and succinctly between the two conceptions. The effect of such a doctrine as is developed in this note of his, would be to make a house of trade in an enemy country exempt from attack unless the proprietor resided there, which is certainly not the case. Moreover, he cites in support of it the Act of Congress of March 3, 1800, which applies a rule of salvage reciprocity to "the vessels or goods of persons *permanently resident* within the territory . . . of any foreign government," saying no word about trading there.³⁵

³³ This JOURNAL, April, 1921, p. 225.

³⁴ And see work on *Captures* (pp. 102-150), and his elaborate appendix to Vol. 2 of his Reports, especially p. 29. "If his own personal residence be in the hostile country, his share in the property of the neutral house is subject to condemnation." The first text-book which appears to identify prize domicile with trade seems to be Thompson's *Law of War* (1852, p. 27). There was the less excuse for it, as Wildman had in 1850 clearly distinguished trading from domicile, and pointed out that either may involve the attribution of an enemy character (*International Law*, p. 45).

³⁵ See also *The Amado* (1847, Newberry, 400, and *De Luneville v. Phillips* (1806), 2 New Rep., 97.

THE ANTONIA JOHANNA (1816, 1 Wheat. 159). Here we get the common case of two parties carrying on business in two countries under different styles. William S. Burnett was domiciled in hostile British, and William Ivens in neutral Portuguese, territory. They were partners, and called themselves Burnett & Co. in London, and Ivens & Burnett at St. Michaels. These the court treated as two separate "houses." Considering the goods as the property of the Portuguese house, they condemned the share of Burnett because of his hostile domicile. It does not appear that the fact that Burnett was trading in that domicile was regarded as important. And the term "commercial domicile" is quietly dropped.

Wheaton, for the captors, endeavored to condemn Ivens' share also. The partnership was one, wherever it was, and a shipment like this, from the house at London to the house at St. Michaels, though expressed to be at the order and for the account and risk of the latter house, was really a shipment by Ivens & Burnett from themselves to themselves. How could it be called an exclusively Portuguese transaction? One cannot but think the argument entitled to great weight. It is much like that which prevailed in the *Jonge Klassina*.

It may here be added that Gaston, in argument, uses again the curious phrase of "a house" having a domicile. This marks the importance which trading and the place of trade had now reached in American cases. It is further worth notice that Wheaton seems to argue that neutrals trading with the enemy country are restricted to the use of commission merchants and supercargoes. This seems to be inconsistent with *The Anna Catharine*; and, if correct, would prevent a neutral firm from maintaining in the hostile country an agency for the distribution of its own goods. Dexter goes almost equally far in the *San José Indiano* (p. 277).

THE DOS HERMANOS (1817, 2 Wheat. 77). Here it was apparently doubted whether a born subject can by emigration *flagrante bello* reacquire a neutral domicile which he at one time had. But the interest of the case to us lies in the fact that Key, *arguendo*, still upheld the classical doctrine, and urged that the residence and trading of Mr. Green, the claimant, in neutral Carthagea was without sufficient *a-vinus manendi*. The case went off on a point of procedure.

THE FRIENDSCHAFT (I) (1818, 3 Wheat. 14). Here the claimant, Winn, had lived at Lisbon some years prior to 1814, when he went (June 12th) to Bordeaux, leaving his staff of clerks, etc., attending to his business for him. He subsequently came to London, where he was on June 29, 1815, intending to return to Portugal. As he was originally domiciled in England, the captors tried to argue that his national character had reverted, on the strength of *The Virginie*. It is not surprising that they were unsuccessful. Had the captured goods been connected with the business done by him in England, we might have had more light thrown on the subject of house of trade.

THE FRIENDSCHAFT (II) (4 Wheat. 105). This case may be cited because there can be no possible doubt that "domicile" was used in it as meaning permanent residence, totally independent of trade. Moreira, Vieira & Machado, carrying on business in London, had a senior partner "domiciled" at Lisbon. The two junior partners were domiciled in London. Moreira applied for restitution of his share because of his domicile in Portugal. If domicile meant trading residence, he could have stated himself out of court, because he was not trading there. He failed, of course, because neutral domicile does not save one's share in an enemy house of trade. But no one told him that he had not a Portuguese domicile, or distinguished between his "domicile" in Portugal and his partners' "domicile" in England. Story, J., simply says, "The only question is, whether the share of Moreira is exempt from condemnation by reason of his neutral domicile." He does not tell him that his domicile in Lisbon is not a domicile in the sense of prize law at all. He says in effect that it is, but that in the circumstances it does not help him.

ELBERS V. KRAFT (16 Johnson, 128). This case, the last that need be cited prior to modern days, was decided in America in 1819, and clearly shows that the old conception of domicile still prevailed in prize law. No new-fangled "commercial domicile" is referred to, and it is probable that by 1819 it had become apparent that the conception of domicile as a test of enemy character was perfectly distinct from that of trading as a like test. The latter, though often confused with trading residence (commercial domicile), or confused with domicile (the domicile of a house, if I may so speak), was probably by this time analyzed as a thing apart. It is worth setting out the facts, as it is one of the few cases in which the neutral character of the trade was held insufficient to outweigh the belligerent character of the personal residence.

A. and B. had a house of trade in a Swedish island (S. Bartholomew's), but B. was in America doing business and maintaining agents on account of the partnership. Was it a Swedish business, or an American one, that B. was carrying on? It would have been truly interesting to know, but the shipment had no special connection with the business B. was carrying on in America, so the point did not arise. The goods were consigned to A. and B. at St. Bartholomew's, *i.e.*, to a Swedish house of trade. But B.'s share was condemned as American property on account of his personal permanent residence.

"The only question," per Spencer, J., "is, whether Kraft was temporarily here, or whether he was here *animo manendi*. He having remained in the United States for such a length of time [two or three years] the presumption of law is that it was his intention to reside there permanently . . . The absence of all proof that B. was here temporarily, or that he intended to return at any future time to S. Bartholomew's is decisive that he had an indefinite intention to remain here; and especially as he was

actually engaged in superintending the business of his house in their concerns in this country."

The judge here seems to regard the business carried on by the partnership in S. Bartholomew's and in America as one individual house. It may have contributed to this that Mr. Kraft had no fixed counting-house in America, so that the great preponderance may have lain with the center of the business at S. Bartholomew's. Or the American business may not have been of a general character. From the English case of *The Ann*, a copy of the record of which is in the Inner Temple Library³⁶ we gather that both Elbers and Kraft customarily resided in S. Bartholomew's and were Swedes by national allegiance.

THE AINA (June 21, 1854, Spinks, 316). Here Lushington, D.C.L.,³⁷ gave it as his opinion that where a neutral "continues to reside in the enemy's country for purposes of trade, he is considered as adhering to the enemy, and is disqualified from claiming as a neutral altogether." This is clearly too wide, and quite inconsistent with Stowell's opinion in *The Anna Catharine*. If he has a house of trade in the enemy's country, it does not matter whether he resides there. If he has not, but resides there for the purpose of carrying on his own foreign trade, he is at perfect liberty to do so; provided, he has no intention of remaining permanently. The *dictum* was not necessary to the decision.

IV. CONCLUSION

The authorities are scanty, so far as the facts of trading go. The principles are vague and elusive. Possibly the whole subject requires re-examination, and the elements of (1) soil, (2) manufacture, (3) distribution, (4) expenditure of profits (domicile), taken into scientific account. Meanwhile it would be a pity that the subject of house of trade should be relegated to the list of those of which it is dangerous to venture on a definition,—like Fraud and Reasonableness. Merchants ought to be able to know where they stand, and should not be exposed to the fluctuations of belligerent prejudice.

³⁶ Folio Prize Appeals (1813-14), fo. 418.

³⁷ It is a current jest in the Temple (not at all justified) that Lushington was "always wrong." In *The Abö* (ib. 349) he made the statement that "in time of war a person is considered as belonging to that nation where he is resident and where he carries on his trade,"—again a very questionable deliverance.

EDITORIAL COMMENT

PRESIDENT HARDING'S FOREIGN POLICY

On the 12th of April, 1921, President Harding appeared before the Congress of the United States in joint and extraordinary session and delivered in person his first message to the legislative branch of the Government of the Union. In the concluding portion of his message, he dwelt upon foreign relations, and he stated, it would seem, in clear and unmistakable terms the attitude of the government in so far as he could express it at that time toward the League of Nations. He said, by way of introduction:

It ill becomes us to express impatience that the European belligerents are not yet in full agreement, when we ourselves have been unable to bring constituted authority into accord in our own relations to the formally proclaimed peace.

Little avails in reciting the causes of delay in Europe or our own failure to agree. But there is no longer excuse for uncertainties respecting some phases of our foreign relationship.

And amid enthusiastic applause, as recorded in the *Congressional Record*, he continued: "In the existing League of Nations, world-governing with its super-powers, this Republic will have no part." Then, amid applause, he added: "There can be no misinterpretation, and there will be no betrayal of the deliberate expression of the American people in the recent election; and, settled in our decision for ourselves, it is only fair, to say to the world in general, and to our associates in war in particular, that the League Covenant can have no sanction by us."

President Harding, however, was unwilling to disassociate himself from the purpose which the advocates of international organization sought to secure through the League, although he was outspoken in this passage and in other portions of his address against the method by which this purpose was to be realized. Thus, he continued: "The aim to associate nations to prevent war, preserve peace, and promote civilization our people most cordially applauded. We yearned for this new instrument of justice, but we can have no part in a committal to an agency of force in unknown contingencies; we can recognize no super-authority." To President Harding the League is an agency of force, and it apparently defeated its purpose through the element of force and through its connection with the Treaty of Versailles. "Manifestly the highest purpose of the League of Nations was defeated in linking it with the treaty of peace and making it the enforcing agency of the victors in the war."

So far, President Harding's attitude was analytical and largely negative. In the very next portion of his address he states the principles of coöperation: "International association for permanent peace must be conceived solely as an instrumentality of justice, unassociated with the passions of yesterday." Upon this foundation he proceeds to build:

The American aspiration, indeed, the world aspiration, was an association of nations, based upon the application of justice and right, binding us in conference and coöperation for the prevention of war and pointing the way to a higher civilization and international fraternity in which all the world might share. In rejecting the league covenant and uttering that rejection to our own people, and to the world, we make no surrender of our hope and aim for an association to promote peace in which we would most heartily join. We wish it to be conceived in peace and dedicated to peace, and will relinquish no effort to bring the nations of the world into such fellowship, not in the surrender of national sovereignty but rejoicing in a nobler exercise of it in the advancement of human activities, amid the compensations of peaceful achievement.

President Harding had, in an earlier portion of his address, called attention to the fact that two years and a half after the armistice we find ourselves technically in a state of war. This state of things should be, in his opinion, ended, and he expressed himself willing to sign a resolution of the Congress "to establish the state of technical peace without further delay." He recognized, however, that such a declaration would merely end the war with Germany, with Austria and with Hungary, to which the United States was a party, and that it would be necessary to negotiate treaties and conventions in order to determine our future relations with those countries. In doing so, he was mindful to point out that we should not forget, indeed that we could not forget, the countries with which we were associated in the war. What will be the content of these various treaties and conventions we do not as yet know. Undoubtedly, the purpose of the Administration is to end the war and then to define its relationship with associates and enemies. After which, the question of association with friendly nations, for all will then be in a state of peace, will be taken up. Thus he said:

With the supergoverning League definitely rejected and with the world so informed, and with the status of peace proclaimed at home, we may proceed to negotiate the covenanted relationship so essential to the recognition of all the rights everywhere of our own Nation and play our full part in joining the peoples of the world in the pursuits of peace once more. Our obligations in effecting European tranquillity, because of war's involvements, are not less impelling than our part in the war itself. This restoration must be wrought before the human procession can go onward again. We can be helpful because we are moved by no hatreds and harbor no fears. Helpfulness does not mean entanglement, and participation in economic adjustments does not mean sponsorship for treaty commitments which do not concern us, and in which we will have no part.

The address which President Harding delivered to the Congress was before its delivery submitted to the members of the Foreign Relations

Committee of the Senate. It met with their approval. Greater evidence of his desire to coöperate with his colleagues of the Senate could not have been given, and it augurs well for coöperation in the future. But coöperation does not mean surrender. President Harding has, on more than one occasion, manifested his intention to perform the duties and to exercise the prerogatives of the office of President. He will, of course, as chief executive, conduct the foreign relations of the government in conjunction with Secretary of State Hughes, or, rather, Mr. Hughes will negotiate in conjunction with the President, inasmuch as Mr. Harding has stated that Mr. Hughes is to be Secretary of State in fact as well as in name. President Harding, however, will doubtless, as a prudent man, sound the Senate in advance as to what that branch of the treaty-making power will accept and, through coöperation, avoid the risk of having this country's commitments to its associates in the late war repudiated. This is not conjecture. As he himself says, "I shall invite in the most practical way the advice of the Senate, after acquainting it with all the conditions to be met and obligations to be discharged, along with our own rights to be safeguarded."

President Harding wants "normalcy" in our foreign affairs, and he is set on restoring it in our domestic affairs. "We can render no effective service to humanity," he says, "until we prove anew our own capacity for coöperation in the coördination of powers contemplated in the Constitution, and no covenants which ignore our associations in the war can be made for the future."

That President Harding and Secretary Hughes, on the one hand, and the Senate of the United States, on the other, may be successful in their joint efforts, must be the hope of those who would see Europe restored and prosperous and the prestige of the United States rehabilitated.

JAMES BROWN SCOTT.

GERMAN REPARATIONS

Another critical stage has been passed in the long and tedious controversy regarding the German reparations due the allies for "damage done to their civilian populations and property" during the World War. Apparently wearied and almost worn out by the repeated disagreements and failures attending previous efforts to secure a settlement, the Allies, on May 5th of this year, finally presented to Germany the following ultimatum:

The Allied Powers, taking note of the fact that despite the successive concessions made by the Allies since the signature of the Treaty of Versailles, and despite the warnings and sanctions agreed upon at Spa and Paris, as well as of the sanctions announced at London and since applied, the German Government is still in default in

fulfillment of the obligations incumbent upon it under the terms of the Treaty of Versailles as regards:

First, disarmament.

Second, the payment due, May 1, 1921, under Article 235 of the treaty, which the Reparations Commission already has called upon it to make at this date.

Third, the trial of war criminals as further provided for by the Allied notes of February 13 and May 7, 1920, and

Fourth, certain other important respects, notably those which arise under Articles 264 to 267, 269, 273, 321, 322 and 327 of the treaty, decide:

A—To proceed from today with all necessary preliminary measures for the occupation of the Ruhr valley by Allied troops on the Rhine under the conditions laid down.

B—In accordance with Article 235 of the Versailles Treaty, to invite the Allied Reparations Commission to notify the German Government without delay of the time and methods for the discharge by Germany of her debt, and to announce its decision on this point to the German Government by May 6, at the latest.

C—To summon the German Government to declare categorically within six days after receiving the above decision its determination: (1) To execute without reservation or condition its obligations as defined by the Reparations Commission; (2) To accept and realize without reservation or condition in regard to its obligations the guarantees prescribed by the Reparations Commission; (3) To execute without reservation or delay measures concerning military, naval and aerial disarmament of which Germany was notified by the Allied rations in their note of January 29; those measures in the execution of which they have so far failed to comply with are to be completed immediately and the remainder on a date still to be fixed; (4) To proceed without reservation or delay to the trial of war criminals, and also with other parts of the Versailles Treaty which have not as yet been fulfilled.

D—To proceed on May 12 with the occupation of the Ruhr valley, and to undertake all other military and naval measures, should the German Government fail to comply with the foregoing conditions. This occupation will last as long as Germany continues her failure to fulfill the conditions laid down.

On the night of the same date (May 5, 1921), the Reparation Commission handed to the German War Burdens Commission the following Protocol:

Germany will perform in the manner laid down in this schedule her obligations to pay the total fixed in accordance with Articles 231, 232 and 233 of the Treaty of Versailles, 132,000,000,000 gold marks, less: (a) the amount already paid on account of reparations; (b) sums which may, from time to time, be credited to Germany in respect of state properties in ceded territory, etc.; (c) any sums received from other enemy or former enemy Powers, in respect to which the commission may decide credits should be given to Germany, plus the amount of the Belgian debt to the Allies, the amounts of these reductions to be determined later by the commission.

The Protocol then provides for the issue of bonds secured by the entire assets of the German Empire and the German States. The first series of bonds for the amount of 12,000,000,000 gold marks, says the Protocol, shall be delivered by July 1, 1921, but the interest of five per cent, plus one per cent for a sinking fund, shall be payable half-yearly from May 1st. The second series for 38,000,000,000 gold marks shall be issued on November 1, 1921. The third series for 82,000,000,000 gold marks shall be

delivered not later than November 1st to the Reparation Commission without coupons attached, and will be issued by the Commission at its discretion when it is satisfied that the payments undertaken by Germany in pursuance of this agreement are sufficient to provide for the payment of interest and the sinking fund on such bonds. The sinking fund shall be used for redemption of the bonds by annual drawings at par.

The bonds will be German Government bearer bonds, in such denomination as the Reparation Commission shall prescribe for the purpose of rendering them marketable, and shall be free from German taxes and charges of every description. Until the redemption of the bonds, Germany will be required to pay annually 2,000,000,000 gold marks and 26 per cent of the value of her exports as from May 1st, or, alternatively, an equivalent amount as fixed in accordance with any other index proposed by Germany and accepted by the Reparation Commission.

"It is provided," continues the Protocol, "that when Germany shall have discharged all her obligations under this schedule, other than her liability with respect to outstanding bonds, the amount payable each year under this paragraph shall be reduced to the amount required in that year to meet the interest and sinking fund on the bonds outstanding."

Germany is required to pay within twenty-five days 1,000,000,000 marks in gold, approved foreign bills or drafts at three months on the German treasury, indorsed by approved German banks in London, Paris, New York, or other place designated by the Reparation Commission. These payments will be treated as the first two quarterly instalments of the amounts due on Germany's liability to pay 2,000,000,000 marks yearly and 26 per cent of the amount of her exports.

Within twenty days the Reparation Commission shall establish a sub-commission to be called the Committee on Guarantees, to consist of representatives of the Allied Powers, including a representative of the United States, in the event of that government desiring to make an appointment. This committee shall comprise not more than three representatives from the nationals of other Powers when it shall appear that a sufficient portion of the bonds are held by nationals of such Powers as to justify their representation. This committee will supervise the application to the bonds service of the funds assigned as security for payment, such as German maritime and land customs duties, and in particular all import and export duties, the levy of 26 per cent on the German exports and the proceeds of such direct and indirect taxes or any other funds as may be proposed by the German Government and accepted by the committee in substitution therefor. The twenty-six per cent levy on exports, less one per cent for sinking fund, shall be paid by the German Government to the exporter. It should be particularly noted that the Committee on Guarantees is not authorized to interfere with the German administration.

Germany, it is stipulated, shall, subject to the prior approval of the

Commission, provide such material and labor as any Allied Power may require toward the restoration of the devastated areas of that Power, or to enable any Allied Power to proceed with the restoration and development of its industrial and economic life. The value of such material and labor shall be determined by German and Allied valuers. The receipts from the fifty per cent levy on German exports, decided upon at the previous London conference, will be credited to Germany under the present arrangement. Any surplus receipts from the interest and sinking fund payments and the export tax shall be applied, as the Commission thinks fit, to paying simple interest not exceeding $2\frac{1}{2}$ per cent from May 1, 1921, to May 1, 1926, on the balance of the debt not covered by the bonds then issued. No interest on this balance shall be payable otherwise.¹

In a valuable dispatch from Paris to the *New York Times*, dated May 7, 1921, Mr. Charles H. Grasty thus comments upon certain provisions contained in the above ultimatum and protocol:

The ultimatum provides that there shall be a fixed payment of \$500,000,000 per annum. This applies to Categories A, B, and C, with priority according to the letters. After the interest on Categories A and B, whatever is left goes to bonds of Category C.

Taking last year as a basis, 26 per cent on exports which in dollars aggregated \$1,250,000,000, there would be a yield of something more than \$812,000,000. This would be disposed of by applying \$750,000,000 to interest and sinking funds on \$12,500,000,000 bonds of the first two categories, leaving a balance of \$62,000,000. It will then be within the discretion of the Reparation Commission to decide what amount of C bonds should be issued with coupons attached in view of the \$62,000,000 of surplus.

Until this happens none of the \$20,500,000,000 bonds of C Category will carry interest. That is a real safeguard against loading Germany with obligations she will find unfillable. The Reparation Commission considered that if Germany started with \$33,000,000,000 of interest bearing debts the burden might be more than she could carry.

The security for these obligations as shown in these ultimatum terms includes practically all Germany's income and resources.

The German Reichstag having yielded to the demand of the Allies by a vote of 221 to 71 and a new Coalition (L) Government having been formed, Germany finally accepted the Allied ultimatum without conditions or reservations on May 10th.

In view of the importance of the reparations issue as a factor in the continued "unsettlement" of Europe since the armistice, it may not be amiss to sketch the main stages in the history of this complicated controversy after the signing of the Treaty of Versailles on June 28, 1919. Inasmuch as the matter has been very fully discussed (if not altogether without partisan bias) by such authorities as Keynes and Baruch, we do not feel called upon to touch upon the differences and difficulties regarding reparations at the Paris Peace Conference. Suffice it to say that Articles 231-233 of the Treaty of Versailles state:

The Allied and Associated Governments affirm and Germany accepts the responsibility of Germany and her allies for causing all the loss and damage to which the

¹ The above summary is based upon an Associated Press dispatch.

Allied and Associated Governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her allies.

The Allied and Associated Governments recognize that the resources of Germany are not adequate, after taking into account permanent diminutions of such resources which will result from other provisions of the present treaty, to make complete reparation for all such loss and damage.

The Allied and Associated Governments, however, require, and Germany undertakes, that she will make compensation for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied and Associated Power against Germany by such aggression by land, by sea, and from the air, and in general all damage as defined in Annex I hereto. . . .

The amount of the above damage for which compensation is to be made by Germany shall be determined by an Inter-Allied Commission, to be called the Reparation Commission, and constituted in the form and with the powers set further hereunder and in Annexes II to VII, inclusive, hereto.

This Commission shall consider the claims and give to the German Government a just opportunity to be heard.

The findings of the Commission as to the amount of damage defined as above shall be concluded and notified to the German Government on or before May 1, 1921, as representing the extent of that Government's obligations.

Ever since the acceptance of this treaty by Germany, the Allies have been engaged in protracted efforts to agree among themselves as to the terms to be imposed upon Germany. Informal discussions in the early part of 1920 resulted in the evolution of the "mobile" plan under which Germany was to pay "certain fixed annuities, and, in addition, variable annuities determined by the fluctuations of her prosperity (as measured by index-numbers based on railway returns, customs, receipts, and other factors) above a fixed datum line."²

At the Boulogne Conference held in the latter part of June, 1920, the index-number scheme was discarded and the expedient substituted of ensuring a full toll on Germany's increasing prosperity by fixing the indemnity impossibly high and giving power to the Reparation Commission to "postpone" (another way of writing "remit") such portions as might prove to be beyond her capacity. The Boulogne Conference was notable for the fact that the project there adopted was primarily the work of a French expert; that it provided for the extension of payments over forty-two years, whereas the treaty definitely stipulated for thirty; and that serious thought was for the first time given to the Financial Conference convened at Brussels by the League of Nations at the request of the Allies, at which it was hoped the foundations might be laid for an international loan to capitalize any annuities by that time agreed on between the Allies and Germany.

The actual outcome of Boulogne was a demand for annuities totalling 269 milliards spread over a period of forty-two years, the Reparation Commission, however, having power, as has been said, to make certain "postponements." It remained, as the treaty stipulated, to "give the German Government a just opportunity to be heard." The

² For this and the quotations following, see an article by H. Wilson Harris on "The Conference That Failed" in the *Contemporary Review* for April, 1921, which has served as the main source of information for this part of our editorial. Cf. "The Breakdown of the London Conference" in the *Fortnightly Review* for April, 1921.

opportunity was fixed for Spa a month later, and the League of Nations, intently observing the evolutions of the Supreme Council, postponed its Financial Conference accordingly.

At the Spa Conference (July 5-16, 1920), the Germans participated in these discussions for the first time. Their main proposals are thus summarized by Mr. Harris:

The payment of minimum annuities on a thirty-year basis.

Germany's creditors to share in any future improvement in her economic condition. Maximum total to be fixed.

All claims against Germany to be consolidated into a single demand.

Germany to contribute in labor and material to reconstruction of devastated areas.

It appears that these proposals were never discussed, owing to the coal and disarmament crises which arose at this time. The Geneva Conference, at which the subject was to have been discussed, was never held.

It was not until the meeting of the Brussels Conference in December, 1920, that the discussions on reparations were resumed.

According to Mr. Harris,³

The Brussels conversations were more hopeful than any of their predecessors. The impossibility of measuring Germany's future capacity, and arriving there and then at a scheme of payments running a generation ahead, was frankly recognized, and a provisional settlement formulated under which Germany should at once engage to pay annuities of three milliards for the five years, 1921-1926, leaving the permanent settlement to be worked out more at leisure in the course of that period.

But where the experts were on the point of agreeing the politicians incontinently intervened. The Supreme Council was to meet in Paris in January to discuss, primarily, the disarmament of Germany. By some process which even now remains obscure Reparations wormed its way on to the agenda, and quickly thrust itself into the forefront. If it was thought, as it undoubtedly was in some quarters, that the Brussels discussions had gone far enough to enable the Heads of States to endorse an agreement that the experts had virtually reached, there was much to be said for the procedure. In actual fact, the first thing the Supreme Council did was to throw out of window the basic principle of the Brussels concordat, that of a preliminary and provisional settlement.

At Paris in 1921, as at Paris in 1919, politicians came together to talk finance and talked politics instead. If M. Briand went out of office in France, M. Poincaré or M. Tardieu might come in. Moreover, there was in the Brussels plan no immediate promise of ready money, and no total of hundreds of milliards to dazzle the eyes of the newspaper readers of the boulevard cafés. The Council turned thumbs up, and the Brussels plan vanished.

And what came instead? What came instead, after a gulf portending disaster between British and French had been bridged by the joint effort of Italians and Belgians, was the now notorious formula, for which the politicians rather than the experts claim pride of authorship, under which the Germans were called on to pay over forty-two years (Mr. Lloyd George was for keeping to the thirty of the treaty, but M. Briand held him to the Boulogne agreement on that point) annuities totalling 226 milliards, together with the equivalent in value of 12 per cent. of German exports, an addition

³ *Op. cit.*

which brought the total fully up to the 269 milliards of Boulogne. It appears to have been implied, though it was never clearly stated, that the Paris demands referred solely to the future, no credit being given to Germany for the heavy payments in kind (put by her own experts at 20 milliards and by the Allies at less than half that) she had made since the Armistice.

So much for the Paris Conference which met in the latter part of January, 1921.

We now come to the "Conference that failed"—the London Conference of the first week of March, 1921. During the month preceding the meeting of this conference, press campaigns were carried on in both France and Germany; and in Germany there were held a series of public meetings, one of them at least addressed by Dr. Simons, the German Foreign Minister, himself, in which the German people were exhorted to "stand firm" and resist exorbitant demands. The natural consequences followed. An atmosphere was created that was highly unfavorable to a moderate and critical discussion of the German counter-proposals had they even been reasonable and adequate, which they were not. The German offer was of course rejected, the rejection being accompanied by an ultimatum. This was followed by the application of "sanctions" in the form of the military occupation of the Rhenish cities of Düsseldorf, Ruhrort and Duisburg early in March.

Along with the imposition of the sanctions went a formal demand by the Reparation Commission for the payment of the balance of the amount due by May 1st under Article 235 of the Treaty of Versailles. This article requires Germany to pay "in such installments and in such manner (whether in commodities, ships, securities, or otherwise) as the Reparation Commission may fix, during 1919, 1920, and the first four months of 1921, the equivalent of 20,000,000,000 gold marks." Germany claimed that she had already delivered more than the equivalent of this amount, whereas the Allies insisted that there was still a balance due of about \$3,000,000,000. The Germans also refused to pay 1,000,000,000 gold marks demanded on a certain date in March by the Reparation Commission.

Further action appears to have been delayed by the result of the Silesian plebiscite, the melace of communistic outbreaks in Germany, and perhaps, also, by labor conditions in Great Britain. Various counter-proposals were put forward in Germany, including one to rebuild the ruined area in France. She even appealed to the United States to act as a sort of an umpire or arbitrator; but while our Government did not refuse its good offices to the extent of transmitting the German counter-proposals to the Allies, Germany was advised by our State Department that they were unacceptable and she was urged to submit "clear, definite, and adequate proposals which would in all respects meet her just obligations." The receipt of the Hughes note containing this advice was immediately followed by the fall of the German Cabinet, and the subsequent

unconditional acceptance of the Allied ultimatum on May 10th (see first part of this editorial).

This acceptance by Germany should not by any means be regarded as a settlement of the reparations question. It merely marks a breathing space or stage in what promises to be a long, tedious and complicated controversy.

AMOS S. HERSHEY.

GEORGE FRANCIS HAGERUP

The death of George Francis Hagerup on February 8, 1921, in the sixty-ninth year of his age, was unexpected by his many friends throughout the world. He had been very active at the Assembly of the League of Nations at Geneva, less than two months before. Many in America were looking forward to his coming to this country in the near future. His coming was anticipated in 1914 when the outbreak of the war not merely prevented but placed new and heavy duties upon him in the service of his own state.

At the time of his death he was Envoy Extraordinary and Minister Plenipotentiary from Norway to Sweden and to Belgium. He had also occupied with distinction other important diplomatic posts.

His early education took Mr. Hagerup to the German and French universities. In 1879 he became a lecturer and six years later professor of law in the University of Christiania. He became Minister of Justice in 1893 and in 1895 became Premier, retaining the office for three years. Five years later when the relations between Norway and Sweden were strained, just before the dissolution of the Union, he was again called to head the Cabinet.

He was a member of the Hague Court of Arbitration, and delegate plenipotentiary from Norway to the Second Hague Conference in 1907.

Mr. Hagerup wrote on many legal topics both in international and in private law, showing particular interest in procedure and in penal law.

He always took an active interest in the Institute of International Law, of which he was made a member in 1898 and of which he was President in 1912, when the session of the Institute was held at Christiania. He was also a member of other learned societies.

Mr. Hagerup was the first member of the Norwegian delegation at the League of Nations Assembly in 1920, and took an active part in its deliberations as well as in the work of the committees. He was a member of the Committee on Technical Organization, and of the Committee on the Permanent Court. He was Chairman of the Sub-Committee of Jurists. He had also served as a member of the Committee of Jurisconsults which had previously drawn up the plan for the establishment of the Permanent

Court of International Justice for which provision was made in Article 14 of the Covenant of the League of Nations.

His life was one of continued service to his state, but in the midst of all these important duties he found time to devote to his many friends and to further the broadest international policies looking to the well-being of the states of the world and of humanity. He recognized that much remained to be done, but in full confidence as to the ultimate outcome, he adopted as his own the words of Mirabeau: "*Le droit deviendra un jour le souverain du monde.*"

GEORGE GRAFTON WILSON

THE MANDATE OVER YAP

The Island of Yap is situated in the Pacific Ocean and is one of the Caroline group. Its southern extremity is in latitude 9° 25' north, longitude 138° 1' east. Its shape is elongated with many projections and considerable bays, and at least one extensive harbor reaching some miles inland. Its area is 79 square miles. Its population in 1902 was 7,500, but stated in 1920 to be 7,155. It was among the islands sold by Spain to Germany by treaty of February 12, 1899, and which passed to the latter Power on October 1, 1899, for the payment of £840,000. The Germans made it the seat of their administration of the Western Caroline Islands, the Pelew Islands and the Marianne Islands. The chief export is copra, which, it may be well to say, is the dried kernel of the cocoanut broken up for export. It is north of the great island of New Guinea, which has over half a million people dwelling on it and which belongs to Holland and to Great Britain. It is almost directly east of the large southern island of the Philippines,—Mindanao. It is vastly more remote from Japan than from the Philippines.

The above facts, it is hoped, are not without their importance, but the world-wide interest which centers in this island is due to the fact that the cable lines connecting San Francisco, Shanghai, New Guinea and the East Indian Islands cross at that point, which is, therefore, the crux of Pacific cable communication. The two German cable lines connecting New York with Germany were cut during the war, and diverted respectively by France to Brest and by Great Britain to Halifax.

At the Congress on Communications, called in Washington in 1920, mainly to determine the disposition of the cables taken from Germany during the war, the United States insisted that the two above Atlantic cables should be returned to the possession of this country, and that the Far East line crossing the Pacific, by way of Yap, should be internationalized.

A serious controversy arose and no final conclusions were reached, and the congress has, in the main, failed of its purpose. A temporary arrange-

ment was completed for joint operation of the cables pending a final settlement. The discussion rapidly broadened into one as to the power of the Supreme Council of the Allied and Associated Powers, which were victors in the World War, or the League of Nations, to dispose of and allocate the territory and rights captured from the enemy, without the concurrence and consent of one chief participant, namely, the United States.

In the Congress on Communications the delegates of Great Britain and Italy were more favorable to the American claims, but France and Japan were unwilling to yield. The claim of Japan was that the Supreme Council had awarded to her a mandate over all islands, ceded by Germany in the Pacific, north of the equator; that Yap came within this description, which latter must be conceded. The contention of the American delegates was strongly supported by their government and by the Foreign Relations Committee of the Senate, on February 21st.

The matter having been called to his attention by the claims of Japan, put forward as mentioned at the Congress on Communications, the Secretary of State of the United States (Mr. Colby), submitted through our ambassador in Paris, to the Council of the League a note of protest which was presented on February 22d, a propitious date. In this the most fundamental contention was that the approval of the United States was essential to the validity of any determination respecting mandates by the Council.

The reply of the Council, March 1st, was conciliatory, calling attention to the complications arising from the fact that the United States had abstained from ratifying the Peace Treaty and had not taken her seat in the Council of the League of Nations. While inviting the United States to participate in two other forms of mandates, not yet finally disposed of, they said they had not the same liberty of action as to the "C" Mandate, which covered the German possessions in the Pacific; that this mandate was "defined by the Council at its meeting in Geneva on December 17, 1920." They reminded the Secretary of State that "the allocation of all the mandated territories is a function of the Supreme Council and not of the Council of the League;" that any misunderstanding, therefore, was between the Allied Powers and not between the United States and the League; that the note had been, therefore, forwarded to the Governments of France, Great Britain, Italy and Japan.

On February 28, 1921, Lord Curzon, for Great Britain, transmitted to our Department of State an able and elaborate note discussing the mandate in Mesopotamia at length, but not dealing with the question as to mandates in the Pacific Islands in particular.

To anticipate a little, we must know that on April 14, 1921, the Department of State of the United States issued a confidential statement to the press for publication in the afternoon newspapers of April 18th,

containing the correspondence of the United States and Japan as to mandates with particular reference to the Island of Yap. It began November 9, 1920, by a telegram to our Chargé at Tokyo, saying the question had arisen in the Communications Conference as to the disposition of Yap; that it was the clear understanding of this government that the Supreme Council at the request of President Wilson reserved for future consideration the final disposition of the Island of Yap, in the hope that it might be placed under international control and thus rendered available as an international cable station. The same was communicated to the Minister of Foreign Affairs for Japan on November 12, 1920, who on November 19th replied that the definite understanding of the Japanese Government was that the Supreme Council came to a final decision placing the whole of the German islands north of the equator under the mandate of Japan with no reservation as to Yap; that, therefore, Japan would not be able to consent to any modification which would exclude Yap "from the territory committed to its charge."

The Acting Secretary of State of the United States on December 6th forwarded to our Chargé at Tokyo a telegram giving the history of the reservations which may be epitomized thus:

On April 24, 1919, at a meeting of President Wilson and Messrs. Lloyd George and Clemenceau, President Wilson reported that he had that morning reminded Baron Makino and Count Chinda that it had been understood Japan was to have a mandate for the islands in the North Pacific, although he had made a reserve as to Yap, which he considered should be internationalized. At a meeting of the Foreign Ministers on April 13, 1919, Mr. Lansing had said that he would like, on a future occasion, to discuss whether in the interests of cable communications it would not be desirable that Yap be internationalized and administered by an international commission in control of cable lines, and that he raised the question to give warning that the question was in his mind and he would propose it for discussion later, and that Yap be considered as a special case. Baron Makino replied that the status of Yap should be decided before the question of cables, and Mr. Balfour thought the question of cables could not be deferred but must be settled in time for the treaty with Germany, and that Germany could be required to give up all title to the island and its status thereafter discussed among the Allies.

On May 1st, at a meeting in Mr. Pichon's room, President Wilson said that, as the cable lines across the Pacific passed through the Island of Yap, which thus became a general distributing center for the lines of communication for the North Pacific, Yap should not pass into the hands of one Power. On May 6th, in the meeting where mandates in the Pacific were discussed, Mr. Lloyd George expressed his understanding that Japan should receive *certain islands* north of the equator. According to the record, President Wilson consented in principle to this, with an explana-

tory statement that as to mandates the "open door" would have to be applied and that there must be equal opportunities for the trade and commerce of other members of the league. To quote the American note: "The Island of Yap, having been previously cited as a special case for particular future consideration, was not intended to be included among the 'certain islands' designated as available to Japan under mandate. This seems obvious, as Yap appears to have been the only island north of the equator in regard to the disposition of which there had existed any difference of opinion. There is no indication in the minutes of any further discussion with regard to this island."

There is an appendix to the minutes of the meeting of May 7th purporting obviously to be a codification of the agreement reached on the 6th as to the North Pacific islands. This is understood to be the basis of the claim of Japan. This does not expressly include all the islands in this category, though the word "certain" is omitted; but the Acting Secretary of State held that the erroneous publication of such a decision, of which this government was not aware, would not validate it and he stated that the President recollects no proposal at this meeting to change the decision of the 6th, and he agreed to no change. He understood it was agreed that Yap had been excluded and reserved for future determination. The American note stated further that on August 19, 1919, the President, before the Senate Committee on Foreign Relations said that he had made the point that the control of Yap should be reserved for the general conference to be held on ownership and operation of cables. These statements were given wide publicity but no comment was received from any nation holding contrary opinions.

The draft mandate covering the German islands in the North Pacific submitted December 24, 1919, provided, in case of dispute as to whether any particular island is or is not covered by the mandate that it should be submitted to the decision of the Council of the League, which should be final. This draft was objected to wholly on other grounds by Japan and so was rejected, which shows that no definite agreement as to all the islands in the general description was deemed to have been reached. The terms of the mandate had not been accepted by Japan or approved by the principal interested Powers and, therefore, the status must be one of temporary occupation, not signifying a vested interest.

Therefore, the Acting Secretary of State stated that the Government of the United States cannot agree that the Island of Yap was included in the decision of May 7th, or in any other agreement of the Supreme Council; that this island must form an indispensable part of international communications, and it is essential that its free and unhampered use for such purposes should not be limited or controlled by any one Power; that, even if under mandate to Japan, it is not conceivable that other Powers should not have free access to land and operate cables; that the

United States is disposed to grant such rights on any unfortified island essential therefor; and the hope was expressed that Japan would concur in the above views, and that, even if she receives the mandate for Yap, other Powers may have free access for cable purposes.

On February 6th, the Secretary for Foreign Affairs of Japan delivered to our Chargé at Tokyo a reply to the foregoing contentions, in substance as follows:

1. That no delegates from Japan were present at the meetings of the Supreme Council of April 21st, May 6th and May 7th, and, therefore, the Imperial Government had no means of ascertaining the utterances of the American delegates on those occasions; that, assuming they were as claimed, they were expressions of the opinion of Mr. Wilson or Mr. Lansing, and are unavailing unless accepted by the Council, and that views expressed by delegates prior to a decision are not necessarily reservations as to such decision; that the mandate as to Yap must be judged by the decision of May 7th, and previous utterances must be regarded as only preliminary conversations of no cogency to qualify or limit the decision. This view is enforced by the fact that the Imperial delegates expressed no agreement with these views and that Baron Makino distinctly disagreed with them at the meeting of the Foreign Ministers on April 30, 1919.

2. That instead of the specific designation of Yap in the assignment being required, sound interpretation would require that it be specifically excluded, if that were meant, as an exception must always be stated definitely; that, if a decision to exclude Yap, on which Japan had maintained a firm attitude, had been made on May 7th, when Japan was unrepresented, it would have been an act of bad faith which Japan could not conceive of; that Japan has notes from Great Britain and France, agreeing in this interpretation; that the words "certain islands" used by Mr. Lloyd George at the meeting of the Supreme Council on May 6th, do not tend to prove the exclusion of Yap since there are other islands in the South Pacific, north of the equator, which did not belong to Germany; that only that appearing on the face of the decisions should be accepted as authoritative in so grave a matter, and no unusual interpretation on vague grounds as to the interest of one party, not expressed in the text, should be accepted.

3. That the decision of May 7, 1919, was made public the following day, and if wrong, an immediate protest would be expected from the United States, but that none followed until over a year and a half later; that this rule does not apply to President Wilson's statements to a Senate committee, as the former is an international agreement, while the latter was a purely domestic affair.

4. That the language as to proceedings in case of dispute in the draft of the mandate submitted December 24, 1919, was solely to provide a means of settlement in case of dispute as to boundaries or the assignment of lands.

Like words were included in other draft mandates. The American contention would honeycomb all with exceptions or exclusions.

5. That whether or not Yap, though under mandate to Japan, should be freely opened to other Powers for the entry and operation of cables, is a matter exclusively for the decision of Japan. Moreover, Colonel House at the Commission on Mandates on July 8, 1919, opposed Viscount Chinda's claim that equal opportunities for trade and commerce should be guaranteed in territories belonging to Class C as in those of Class B. That, therefore, America cannot justly contend for the open door in the Class C territories, at least against Japan. Japan cannot consider herself bound in any way to recognize the rights of other governments in the matter of cables as indicated.

The new administration in the United States had come into office on March 4, 1921, and Mr. Hughes succeeded Mr. Colby as Secretary of State. On April 5th, Mr. Hughes telegraphed our Chargé at Tokyo a very cogent and vigorous reply to the Japanese note of February 26th, which reply was communicated to the Japanese Foreign Office on the same day.

Mr. Hughes states that the Government of the United States is unable to agree with the contention of the Japanese Government that to sustain its contention the United States must not only prove statements as claimed but also that the Supreme Council decided in favor of those views; that, on the other hand, the United States cannot be bound except by its own consent and that it has never assented to the mandate embracing Yap; that the United States Government deems the fundamental basis of its representation and the principles in its view determinative to be:

That the right to dispose of the overseas possessions of Germany was acquired only through the victory of the Allied and Associated Powers and that Japan does not deny the participation of the United States in that victory. It necessarily follows that the right accruing through the common victory is shared by the United States and there could be no valid or effective disposition of the overseas possessions of Germany without the assent of the United States, and as she had never vested either the Supreme Council or the League of Nations with any authority to bind her or to act on her behalf, there had been no opportunity for any decision which could affect her rights.

That the rights of the United States could be ceded or surrendered only by treaty, and no such treaty has been made; that failure to ratify the Treaty of Versailles does not detract from the rights of the United States which accrued prior thereto, and, moreover, that treaty expressly provides that Germany renounces in favor of the Principal Allied and Associated Powers all her rights and title over her oversea possessions, which confirms the position of the United States; that the draft convention for the mandate "proceeded in the same view" and purported to confer the mandate on Japan on behalf of the United States as one of the

grantors, thus recognizing the rights of the United States; that as the United States did not enter into this convention, or any treaty, it is unable to understand upon what grounds it was attempted to confer the mandate without its agreement, as the League had no authority to confer, and the Council none to confirm, the mandate in this respect, and it can have no efficiency as to the United States.

That the decision of May 7, 1919, cannot bind the United States, and the brief minutes of that meeting of the Supreme Council could not be construed without regard to other proceedings of the Council, and that these show the reservations as to Yap made by President Wilson and the details appear in his statement to the Department of State of March 3, 1921. This statement shows that his attention was first called, in October, 1920, to the contention that the decision of May 7, 1919, assigned to Japan a mandate for Yap. He restates his specific reservation as to the same and says he assumed these would be duly considered in the settlement of the cable question; that he never abandoned or modified his position as to Yap, and never agreed that the same be included in the mandate to Japan; that all agreements as to mandates were conditional on a subsequent agreement being reached as to the specific terms of the mandate and, further, on their being accepted by each of the Principal Allied and Associated Powers.

Mr. Hughes said further that, as the decision of May 7, 1919, did not, and in the nature of things could not, have finality, the United States saw no ground for the contention that it was its duty to make immediate protest and that omission thereof operated as a cession of its rights; that as soon as its attention was called to the claim of Japan (through the Conference on Communications of October, 1920), it at once informed Japan and the other Powers that it understood that Yap was not included in the mandate.

He expressed the regret of his government that, despite the above, there had been an attempt to pass upon drafts of mandates, including Yap, and to put the same in effect, in the name of the United States, without its assent; that it assumed such action was taken under a misapprehension and would be reconsidered; that the United States must insist that it has not lost its right or interest as it existed prior to action of the Supreme Council or the League of Nations, and that it cannot recognize the allocation of the island or the validity of the mandate to Japan; that the United States seeks no exclusive interest or any privileges not accorded to other Powers, including Japan; that relying on the sense of justice of the Government of Japan and of the other Allied and Associated Powers, it looks with confidence to a disposition conserving the just interests of all.

The reply of France of April 7, 1921, stated that she would "broach the examination thereof with the greatest desire to find a solution which will give every satisfaction to the United States" and that she had already

done all in her power to aid the American Government in the matter; that the Japanese Government was cognizant of the American reservations, and that there were elements for a resumption of conversations between the United States and Japan.

On April 29, 1921, the Italian Ambassador at Washington handed to the Department of State a note from his government, in which it expressed complete agreement with the text of the American note of April 5th, concerning the equality of right among mandatories in the exercise of their mandates. It, moreover, expressed her expectation that the Conference of Ambassadors in Paris "will pronounce itself with equanimity in such a way as to eliminate every possibility of disagreement and to conciliate all conflicting interests."

On May 23, 1921, it was announced that the Department of State had received a communication from Japan in which Japan is understood not to have taken a definitive position. The tone of the communication is announced as satisfactory and the officials are satisfied with the progress toward a solution of the question. The contents of the note, however, were not made public, but there is no *impassé*.

The matter of correction seems to rest with the Supreme Council which, through misapprehension, took the action in question.

The contention of Mr. Hughes is far-reaching and seems, if successful, to unsettle the right to all overseas possessions of Germany under mandates issued without the consent of the United States and, moreover, without consent by formal treaty. The argument which he advances, however, is very logical and apparently incontrovertible. "To the victors belong the spoils." If they have conquered by joint action, they own the spoils as joint owners. Even in case of private joint owners, it is submitted, there is no right of a majority to dispose of the interest of a minority. The rule that the majority can control has no application to the disposal of property so held. If Spain had ceded the Philippines to three nations, for instance, to the United States, Germany and Japan, two of these Powers could not have transferred the complete title to the islands and thus altered or diminished the right and title of the third. An agreement or solemn treaty by the United States and Germany transferring the islands to Great Britain would have been wholly ineffective as to the interest of Japan. That interest would have persisted unaltered and unaffected.

The rule spoken of applies much more widely and absolutely in all international transactions than in matters of private property. It is universally agreed, it is believed, that a sovereign nation by joining in an international congress or conference in no way submits to be bound by a majority, unless she has so expressly agreed. Her sovereignty remains unimpaired and unsundered. Therefore, conventions adopted at the Hague Conferences required unanimous action to be controlling on all, and nations refusing to concur were acknowledged not to be bound. Nu-

merous examples of such refusals will occur to any student of those conferences. Professor Oppenheim in his great work on *International Law*, in discussing the procedure of international congresses and conferences, says:¹ "The motion must be carried unanimously to consummate the task of the congress, *for the vote of the majority has no power whatever in regard to the dissenting parties.*" And Professor Hershey² lays down the rule thus: "To give full legal validity to a vote or resolution, practical unanimity is necessary, though the majority may consider the motion binding upon its members."

The Supreme Council, which is in the nature of an international conference, plainly cannot, by a majority vote, deprive any nation even if there represented, of rights or territory unless that nation acquiesce.

The Japanese argument must be deemed inconclusive, inasmuch as it assumes that the United States must show that the exceptions and reservations as to Yap interposed by the representatives of the United States were ratified and adopted by the Supreme Council or the Council of the League. As the rights of the United States in the conquered territory were derived from their association in the victory, and not conferred by the Supreme Council or by the League or its Council, they could be subjected to the control or modification of those bodies only by appropriate action on the part of the United States itself, and none such ensued. No power to cede territory to a foreign nation is believed to be vested in any branch of the Government of the United States except in the treaty-making power. That power involves the action of the President and the concurring action of two-thirds of the Senate.

That acquiescence for a length of years and conduct inconsistent with ownership may be evidence against a nation, as against an individual, tending to raise an equitable presumption of transfer or loss of title, may be admitted. But there has been no such lapse of time or laches in the present matter. All the transactions are recent. Not even the time which by municipal law outlaws a simple account, has elapsed, much less that which applies to landed property.

It is believed that, in the interest of all nations, the internationalization of the cable rights on the island will be consummated by amicable adjustment. This disposition invades no rights, aggrandizes no one Power, and safeguards all. It must, therefore, meet the grateful commendation of the vast majority of men and nations. No act on the part of Japan could more strengthen and emphasize her entente with the other great Powers than her acquiescence in this readjustment for the common good.

CHARLES NOBLE GREGORY.

¹ Vol. I, p. 512.

² *Essentials of International Public Law*, p. 309.

THE RELINQUISHMENT OF EXTRATERRITORIAL JURISDICTION IN SIAM

On December 16, 1920, there was signed on behalf of the United States and Siam, a treaty revising the conventions theretofore existing between the two countries, as well as a protocol attached to and made a part of the treaty. In April, 1921, the Senate advised and consented to ratification. On May 6th, the President ratified the treaty. In many respects the annexed protocol embraces the most important and distinctive portion of the arrangement. Doubtless in Siamese opinion it is of vast significance; for it marks a definite achievement in the effort long in the making, to free Siam from the obligation to permit the exercise of extraterritorial jurisdiction by American authorities in its territory. This accomplishment has been in part the result of the protracted and unremitting labors of three distinguished Americans—Strobel, Westengard, and James—who in turn, for a period covering some twenty-five years, have striven successfully to place the institutions and judicial system of Siam on a plane such as to command the full respect of the outside world.¹

Article I of the protocol announces that the system of jurisdiction established in Siam for citizens of the United States, and the "privileges, exemptions, and immunities" now enjoyed by them as a part of or appurtenant to that system "shall absolutely cease and determine on the date of the exchange of ratifications," and that thereafter all citizens of the United States and persons, corporations, companies, and associations entitled to its protection in Siam shall be subject to the jurisdiction of the Siamese courts. Article II sets forth, however, a condition subsequent, which for the time being, modifies or restricts the full operation of the foregoing provisions. It is there declared that until the promulgation and putting into force of all the Siamese codes, namely, the Penal Code, the Civil and Commercial Codes, the Codes of Procedure, and the Law for Organization of Courts, "and for a period of five years thereafter, but no longer," American diplomatic and consular officials in Siam, may, whenever they deem it proper to do so in the interest of justice, and by means of written requisitions addressed to the judges of courts in which such cases are pending in any Siamese court except the Supreme or Dika Court, demand the transfer of the particular case to themselves, in which an American citizen or a person, corporation, company, or association entitled to the protection of the United States is defendant or accused. Upon the transfer of a case to American authority for adjudication, the Siamese jurisdiction is to cease; and the case so evoked is to be disposed of by the diplomatic or consular official in accordance with the requirements of the appropriate laws of the United States. There is, however,

¹ It should be borne in mind that the indebtedness of Siam to foreign counselors and jurists is not confined to those of American nationality. It is understood that English lawyers have rendered vast aid in the task confronting that country.

an important limitation in this regard. With respect to all matters coming within the scope of codes or laws of the Kingdom of Siam regularly promulgated and in force, of which the texts have been communicated to the American Legation in Bangkok, it is declared that the rights and liabilities of the parties shall be determined by Siamese law. That law is obviously to be applied by the American tribunal. For the purpose of trying appropriate cases and of executing judgments to be rendered therein, it is announced that the jurisdiction of the American diplomatic and consular officials in Siam is continued. It is also declared that should the United States perceive, within a reasonable time after the promulgation of the codes above specified, any objection thereto, the Siamese Government will endeavor to meet such objections.

According to Article III, appeals by persons and entities entitled to American protection, from judgments of courts of first instance in cases to which they may be parties, shall be adjudged by the Court of Appeal at Bangkok; and an appeal on a question of law shall lie from that tribunal to the Supreme or Dika Court. Again, such persons or entities who are parties defendant or accused in any case arising in the provinces, are to be permitted to apply for a change of venue, and should the court consider such change desirable, it is provided that the trial shall take place either at Bangkok or before the judge in whose court the case would be tried at Bangkok.

In order to prevent difficulties arising in the transfer of jurisdiction, Article IV makes specific and ample provision. Thus all cases in which action shall be taken subsequent to the date of the exchange of ratifications of the treaty are to be entered and decided in the Siamese courts, regardless of whether the cause arose before or after that date. Again, all cases pending before American diplomatic and consular officials on that date are to take their usual course before such officials until final disposition, the American jurisdiction remaining in full force for that purpose. In connection with any such case or with cases evoked by American officials for transfer to themselves, it is declared that the Siamese authorities shall upon American diplomatic or consular request, lend their assistance to all matters pertaining to the case.

It remains to be seen whether, should the treaty and protocol come into force through an exchange of ratifications, American diplomatic or consular authorities in Siam will deem it necessary to assert the right to evoke cases and thereby effect their transfer. It is not improbable that pending the promulgation of the Siamese Codes, or within the five-year period thereafter, there may be no strong disposition to substitute American for Siamese courts. It must be emphasized that the protocol contemplates normally adjudications concerning American citizens before Siamese tribunals, and a transfer therefrom only under the conditions specified, and which may not in fact arise. More important, however, is

the definite agreement that upon the promulgation of all the Siamese codes specified in Article II, and after a definite period of time, Siam acquires fullest rights of jurisdiction over causes pertaining to Americans, and that the United States so agrees to an ultimate and complete relinquishment of extraterritorial jurisdiction.

The arrangement thus marks the recognition of a definite advance in the condition of Siam, and of one inconsistent with the long-continued maintenance of foreign courts on Siamese soil. It is gratifying that the United States should formally so reckon with these facts. Its policy in so doing is in harmony with the spirit manifested in one of its treaties with another oriental country, and evincing a readiness to aid and encourage the reform of the local judicial system with a view to bringing about the relinquishment of extraterritorial privileges. The effect of the present treaty and protocol upon the future contractual relations of Siam with other states is incalculable. The new arrangement must serve to inspire fresh negotiations contemplating equal concessions by European Powers. Upon China and certain other countries the influence of this new token of the progress of Siam, as well as of the coöperation of the United States, must be far-reaching. With President Harding's ratification of the compact, there is brought home to enlightened opinion in every land a fresh consciousness of the fact that the potentialities and aspirations of every country under every sun are unlimited, and normally, under fair guidance, may be productive of judicial institutions capable of meting out exact justice to resident aliens of any nationality; and, therefore, worthy of general respect.

CHARLES CHENEY HYDE.

THE TREATY BETWEEN COLOMBIA AND THE UNITED STATES

On April 20, 1921, the Senate of the United States advised and consented to the ratification of the treaty between Colombia and the United States, concluded on April 6, 1914. The treaty was signed on behalf of the United States by Thaddeus Austin Thomson, then Minister of the United States to Colombia, and by six plenipotentiaries on behalf of Colombia, the principal one being Francisco José Urrutia, then Minister of Foreign Affairs.

The purpose of this treaty was, as stated in its preamble, "to remove all the misunderstandings growing out of the political events in Panama in November, 1903; to restore the cordial friendship that formerly characterized the relations between the two countries, and also to define and regulate their rights and interests in respect of the interoceanic canal, which the Government of the United States is constructing across the Isthmus of Panama."

The purpose of the two countries has remained unchanged, and therefore the preamble of the original treaty was advised and consented to by the Senate, that body replacing "is constructing" by "has constructed," inasmuch as the Canal, then in progress, has since been completed and opened to the commerce of the world. To effectuate the purposes, the sum of \$25,000,000 gold was to be paid by the United States to Colombia "within six months after the exchange of the ratifications." This clause disappears, but the money remains. In the amended treaty, it is all to be paid in Washington. The sum of \$5,000,000 is to be paid within six months after ratification, and from the date of the first payment the balance, that is to say, the sum of \$20,000,000, is to be paid in four equal installments of \$5,000,000 each. In the original treaty the money was to be paid in gold. In the amended treaty, it is to be paid in dollars, but it is believed that there can be no objection on the part of Colombia to receive the \$25,000,000 even though it should not be in gold. This obligation appears in the second article of the amended treaty instead of the third of the original, but it will be equally agreeable to Colombia to have it appear in an earlier than in a later article.

The purpose of the treaty, however, was not merely to remove "the misunderstandings" between Colombia and the United States "growing out of the political events in Panama in November, 1903," but also to remove, in so far as they could be removed, the misunderstandings between Colombia and Panama.

In the fourth article of the original treaty, Panama was to be recognized by Colombia as an independent nation and its boundaries defined. By the recognition of Panama as an independent nation, separate and distinct from Colombia, and the determination of the boundaries between the two, the two countries would be in a position to meet as equals and to arrange their business upon a footing of equality, as is the case with other nations. The United States, anxious to be helpful to each, agreed in the original fourth article and in consideration of this recognition on the part of Colombia, to take steps immediately after the exchange of ratifications to "obtain from the Government of Panama the despatch of a duly accredited agent to negotiate and conclude with the Government of Colombia a Treaty of Peace and Friendship with a view to bring about both the establishment of regular diplomatic relations between Colombia and Panama and the adjustment of all questions of pecuniary liability as between the two countries, in accordance with recognized principles of law and precedents." This article is retained in the amended treaty without change, other than that its number is changed from four to three.

The second article of the original treaty, which becomes the first of the amended treaty, has a number of changes. The first is an addition which vests in the United States the title "entirely and absolutely" and "without any encumbrances or indemnities whatever" to the canal and

the Panama Railroad. The canal is the property of the United States according to the treaty with Panama of November 18, 1903. Colombia was not a party to this treaty, but this clause recognizes the right which the United States obtained to the canal from Panama, through whose territory it passes. In like manner the railway belongs to the United States and in this clause Colombia recognizes this ownership and removes any cloud from that title, as far as Colombia is concerned.

The balance of Article I, originally Article II, of the Colombian treaty, confers upon Colombia the right to use the canal for the transportation of its troops, materials of war, and ships of war, without paying charges to the United States; the right to transport the products of its soil and industry, as well as its mails, free of duty other than what the United States would pay under like conditions; the right to use the railway between Ancon and Cristobal or any other railway when the canal is interrupted and closed to traffic, upon a footing of equality with the United States; and, finally, the right to transport at actual cost, which shall not exceed one-half of the freight levied upon similar products of the United States, "coal, petroleum and sea salt, being the products of Colombia, for Colombian consumption, passing from the Atlantic coast of Colombia to any Colombian port on the Pacific coast, and vice versa."

Certainly, these are valuable privileges. They are concessions of a very generous nature, and they are in addition to the lump sum of twenty-five million dollars which the United States undertakes to hand over to Colombia in pursuance of its purpose, "to remove all the misunderstandings growing out of the political events in Panama in November, 1903."

The purpose of the United States in so doing, is expressed in actions, not words, and "actions," they say, "speak louder than words." This, apparently, was the opinion of the Senate, which rejected Article I of the original treaty, conceived in the following language:

The Government of the United States of America, wishing to put at rest all controversies and differences with the Republic of Colombia arising out of the events from which the present situation on the Isthmus of Panama resulted, expresses, in its own name and in the name of the people of the United States, sincere regret that anything should have occurred to interrupt or to mar the relations of cordial friendship that had so long subsisted between the two nations.

The Government of the Republic of Colombia, in its own name and in the name of the Colombian people, accepts this declaration in the full assurance that every obstacle to the restoration of complete harmony between the two countries will thus disappear.

If this article had been inserted in the preamble, and had been followed by the material concessions stated in the first article of the revised treaty and the proffer of good offices to Colombia and Panama in the third, the treaty should, it is believed, have been ample, according to international usage, to restore friendly relations. The purpose expressed in the actual preamble, the material concessions, and the proffer of good offices, to which

are added twenty-five million dollars of American currency, would seem to constitute a very real desire to restore friendly relations.

Overdoing is perhaps as questionable as underdoing. As it is, there must have been very serious grounds for paying such a large sum to Colombia. What are these grounds? A reference to earlier treaties between Colombia and the United States and between Great Britain and the United States is necessary to a correct understanding of the international situation and the relation of the Isthmus of Panama to the United States.

The advantages had long been foreseen of a canal through the Isthmus of Panama, and it was only a question of time until the attempt should be made to cut the Isthmus and to unite the oceans—the Atlantic and the Pacific. The settlement of the northwestern boundary of the United States by the treaty of June 15, 1846, with Great Britain, and the acquisition of California through the Treaty of Guadalupe Hidalgo, concluded with Mexico on February 2, 1848, extended the United States across the entire continent from the Atlantic to the Pacific Ocean. The discovery of gold in California and the rush of adventurers to that State in 1849, across vast stretches of territory then uninhabited, amid great hardships and the loss of much time, turned attention to Panama and the project of securing a short passage from the east to the west through a canal.

Great Britain was likewise interested in such a project. Colombia, or, as it was then called, New Granada, was fearful that foreign Powers might seek to acquire the Isthmus, and for this reason Mr. Mallarino, its Minister of Foreign Affairs, applied in 1846 to the Government of the United States to enter into a treaty which should protect Colombia against the seizure of the Isthmus. He called attention to what he considered the undue encroachments by Great Britain in South America, and stated that if that country should acquire the Isthmus of Panama, "the empire of American commerce in its strictly useful or mercantile sense would fall into the hands of the only nation that the United States can consider as a badly disposed rival." It was, however, not solely the interests of the United States which he had in mind. He spoke for Colombia and the Spanish-American republics, of which his own country was one. Thus, he continued:

It would be perfectly superfluous to mention the political consequences that would be entailed upon America. This dominion or ascendancy would be equally ruinous to the commerce of the United States and to the nationality of the Spanish-American republics, most direful for the causes of democracy in the New World, and a constant cause of disturbance of the public peace in this our continent.

He therefore proposed a treaty between the United States and Colombia which, in consideration of certain commercial concessions, would assume the obligation "of guaranteeing the legitimate and complete or integral possession of those portions of territory that the universal mercantile interests require to be free and open to all nations." And he likewise stated

that the commercial concessions should be the consideration for the obligation, as "otherwise New Granada would be obliged to grant the same privileges unconditionally to England."

As a result of this request, the treaty of December 12, 1846, was negotiated by Mr. Benjamin A. Bidlack, *Chargé d'Affaires* in Bogota, on behalf of the United States, and by Manoel Maria Mallarino, Secretary of State and Foreign Relations, on behalf of New Granada. In its 35th article, the treaty guaranteed to the United States that "the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist, or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States."

It will be recalled that the treaty had been concluded at the request of Colombia, in order to prevent any foreign Power from seizing the Isthmus. The protection of the United States was wanted, and therefore advantages and concessions were to be offered the United States as a consideration for the desired protection. Therefore, "to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages, and for the favors they have acquired by the 4th, 5th, and 6th articles of this treaty," the United States was to agree and did actually oblige itself in the treaty to "guarantee positively and efficaciously to New Granada by the present stipulation the perfect neutrality of the before-mentioned Isthmus with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists, and in consequence the United States also guarantee in the same manner the rights of sovereignty and property which New Granada has and possesses over the said territory."

It is evident from the origin of the treaty and from the express wording of the article in question that the guarantee was to inure to the benefit of the United States and to secure Colombia against the aggression of a foreign power. The neutrality would, however, be affected in case of a civil war, in which contingency the United States could intervene to prevent the interruption of transit across the Isthmus.

To obtain a right against Colombia was one thing; to obtain it against Great Britain was another. The relative positions of Great Britain and the United States at the time made it seem to American statesmen of that day the part of wisdom to share what they might not hope to acquire alone, and as a partner prevent exclusion from a great enterprise. Therefore, John M. Clayton, Secretary of State, on behalf of the United States, and Sir Henry Lytton Bulwer, British Minister to the United States, on behalf of Great Britain, concluded a treaty—the so-called Clayton-Bulwer Treaty—on April 19, 1850, by which those two countries agreed to facilitate the construction of a canal across Central America and "to extend their protection, by treaty stipulations, to any other practicable communications,

whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama."

Later, the United States desired not merely to be a partner in such a venture but to be the sole party. The Clayton-Bulwer Treaty stood in the way. After much negotiation Great Britain agreed to abrogate that treaty, leaving the United States free to take the initiative without the co-operation of Great Britain. The Clayton-Bulwer Treaty was therefore expressly abrogated by the treaty of November 18, 1901, commonly called the Hay-Pauncefote Treaty, owing to the fact that Secretary Hay negotiated it on behalf of the United States and Lord Pauncefote, Ambassador to the United States, negotiated it on behalf of Great Britain.

The way was now clear for the United States to build a canal. It finally decided against a canal through Nicaragua in favor of a canal through the Isthmus of Panama, if satisfactory arrangements could be made with Colombia. Colombia proposed such a treaty, and also the financial consideration for the use of its territory. Therefore, the so-called Hay-Herrán Treaty was concluded on behalf of the United States by Secretary of State Hay and by Tomás Herrán, on behalf of Colombia, on January 22, 1903. It authorized the United States to cut a canal across the Isthmus of Panama, then a part of Colombia, and it granted the United States for the period of one hundred years, subject to renewal by the United States as long as it might desire to do so, a zone from ocean to ocean through which the canal should run.

In consideration of this authorization and grant and other rights set forth in the treaty, the United States agreed to pay the sum of \$10,000,000 in gold coin "after its approval according to the laws of the respective countries," and also an annual payment during the life of this convention of \$250,000 in like coin beginning nine years after the date aforesaid.

The ratification of the treaty was advised and consented to by the Senate of the United States on March 17, 1903. It was submitted to the Congress of Colombia, but that body adjourned on October 31, 1903, without ratifying the treaty. The State of Panama resented the failure to approve the treaty to such an extent that a revolution broke out on November 2d. Forty-two marines from the *U. S. S. Nashville* were landed at Panama the next day, and again on the succeeding day, in order to protect American men, women and children. The United States apparently took no action other than to prevent the transportation of Colombian or Panaman troops across the Isthmus in order to keep that line of communication open in accordance with what it conceived to be its rights under the treaty of 1846 with Colombia.

In 1902 there had been a revolution in Panama and the United States acted in September of that year as it did in November of the ensuing year.

Thus, Commander McLean, commanding the *U. S. S. Cincinnati*, informed the commander of the Colombian forces and the commander of the insurgent forces—

that the United States naval forces are guarding the railway trains and the line of transit across the Isthmus of Panama from sea to sea, and that no persons whatever will be allowed to obstruct, embarrass, or interfere in any manner with the trains or the route of transit. No armed men except forces of the United States will be allowed to come on or to use the line. All of this is without prejudice or any desire to interfere in domestic contentions of the Colombians.

The revolution of 1902 failed. The revolution of 1903 was successful. Panama's representative, Mr. Philippe Bunau-Varilla, appeared at Washington, asking recognition of Panama. This was accorded on November 13, and on November 18, 1903, he signed a treaty on behalf of the Republic of Panama, Secretary of State Hay signing on behalf of the United States. By this treaty, ratified by both parties, the United States obtained a right to build the canal through the territory recognized by Panama and the United States as belonging to the former as a sovereign state. On the same day France recognized the Republic of Panama, and within the course of the month it was recognized by China, Austria-Hungary and Germany.

Colombia complained of the action of the United States, and proposed to submit to arbitration at The Hague "the grievances" growing out of the political events in Panama in November, 1903. This proposal Secretary Hay refused in a note to the Colombian minister, dated January 5, 1904, on the ground that these "grievances" were of a "political nature such as nations of even the most advanced ideas as to international arbitration have not proposed to deal with by that process," and that "questions of foreign policy and of the recognition or non-recognition of foreign states are of a purely political nature and do not fall within the domain of judicial decision."

On a later occasion, Secretary of State Root replied on behalf of the United States, to the same contentions in a note to the Colombian Minister, dated February 10, 1906, in which he said:

The real gravamen of your complaint is this espousal of the cause of Panama by the people of the United States. No arbitration could deal with the real rights and wrongs of the parties concerned unless it were to pass upon the question whether the cause thus espoused was just—whether the people of Panama were exercising their just rights in declaring and maintaining their independence of Colombian rule. We assert and maintain the affirmative upon that question. We assert that the ancient State of Panama, independent in its origin and by nature and history a separate political community, was confederated with the other States of Colombia upon terms which preserved and continued its separate sovereignty; that it never surrendered that sovereignty; that in the year 1885 the compact which bound it to the other States of Colombia was broken and terminated by Colombia, and the Isthmus was subjugated by force; that it was held under foreign domination to which it had never consented; and that it was justly entitled to assert its sovereignty and demand its independence

from a rule which was unlawful, oppressive, and tyrannical. We cannot ask the people of Panama to consent that this right of theirs, which is vital to their political existence, shall be submitted to the decision of any arbitrator. Nor are we willing to permit any arbitrator to determine the political policy of the United States in following its sense of right and justice by espousing the cause of this weak people against the stronger Government of Colombia, which had so long held them in unlawful subjection.

There is one other subject contained in your note which I cannot permit to pass without notice. You repeat the charge that the Government of the United States took a collusive part in fomenting or inciting the uprising upon the Isthmus of Panama which ultimately resulted in the revolution. I regret that you should see fit to thus renew an aspersion upon the honor and good faith of the United States in the face of the positive and final denial of the fact contained in Mr. Hay's letter of January 5, 1904. You must be well aware that the universally recognized limitations upon the subjects proper for arbitration forbid that the United States should submit such a question to arbitration. In view of your own recognition of this established limitation, I have been unable to discover any justification for the renewal of this unfounded assertion.

Both countries were anxious to find a way out, and, pursuant to a suggestion made to Secretary Root when he visited Colombia on his return from South America in 1906, Mr. Enrique Cortes, then Colombian Minister to Great Britain, was transferred to Washington in order to work out a settlement of the differences with Secretary Root. Their negotiations resulted in the so-called tripartite agreement, consisting of three treaties—the first between Panama and the United States, the second between Colombia and the United States, and a third between Colombia and Panama, dated January 9, 1909, to be ratified as one and the same instrument and only to go into effect when each of the three had been ratified by each of the three contracting parties.

According to the treaty with Colombia, Panama was to transfer to Colombia for a period of ten years the annuity of \$250,000 to be paid by the United States to Panama. Colombia was to be allowed free transit over the canal and railroad for mails, troops, etc., and was to retain ownership of the fifty thousand shares of capital stock held by Colombia in the Panama Canal Company. In consideration of the ten annual payments, amounting in all to \$2,500,000, and the concessions made to Colombia in the use of the canal and the railroad across the Isthmus, friendly relations were to be restored between the two countries; Colombia was to acknowledge the independence of Panama, and agree to a settlement of the boundaries between the two countries. The differences between Panama and the United States were either settled by the treaty or were to be by recourse to arbitration in certain contingencies.

The special concessions to Colombia contained in the treaty between that country and the United States were, through Secretary Root's practical foresight and diplomatic skill, agreed to in advance by Great Britain, which might perhaps have objected to some of them as inconsistent with the Hay-Pauncefote treaty of 1901.

These treaties were approved by the Senate of the United States and by the Republic of Panama. Unfortunately, the treaty between the United States and Colombia was rejected by the Congress of Colombia, to which it was submitted and the government overturned which had concluded and which advocated the treaty and the settlements of which it formed a part.

In President Taft's administration, Mr. James T. DuBois was sent as minister of the United States to Colombia. Very sympathetically and very deftly he established friendly relations with the members of the government to which he was accredited, and in a letter written on his return to Washington to Secretary of State Knox, dated September 30, 1912, he thus diagnosed the situation:

In investigating the causes of the rejection of the Root-Cortes treaty, I asked many prominent persons in various walks of Colombian life what were the serious objections to this treaty, and the replies were to this effect:

"Five years after President Roosevelt had taken Panama from us with rank injustice, your Government, still under his chief magistracy, offered us a paltry \$2,500,000 if Colombia would recognize the independence of her revolted province, fix our frontier at a further loss of territory, open all our ports free to the refuge of vessels employed in the canal enterprise, and exempt them from anchorage or tonnage dues, renounce our rights to all of our contracts and concessions relating to the construction and operation of the canal or railroad across the Isthmus, release Panama from obligation for the payment of any part of our external debt, much of which was incurred in the interest of Panama, and enter into negotiations for the revision of the treaty of 1846, which five years before had been openly violated by the United States in their failure to help maintain the sovereignty over the rebellious province which they had solemnly guaranteed. The reply was to this, banishment of our minister who negotiated the treaty, and all South America applauded our attitude."

These are the sentiments that are universal in Colombia to-day, and they are increasing from year to year. Conversing discreetly with many persons in the Republic, I found no one free from the spell of the spirit of reproach and condemnation. I did find, however, a genuine desire among the people of all classes that the United States and Colombia should, at the earliest possible moment, reach a just and honorable settlement of this unfortunate dispute.

A great change has come to the Colombian mind within the past year. When I reached Bogota in the autumn of 1911, I found a universal demand for arbitration. When I left Bogota last July there was an open desire for direct negotiations, and it was the general belief that these should take place at the Colombian capital.

Secretary Knox conferred with President Taft, who agreed to the resumption of negotiations along the lines suggested by Mr. DuBois, as appears from the following letter, dated November 30, 1912:

THE WHITE HOUSE,

Washington, November 30, 1912.

My dear Mr. Secretary

I have your letter of November 29, with reference to the settlement of the questions between this Government and Colombia. I have read the communication of Minister DuBois and your proposed instructions to him and the suggested treaty. The proposition consists in the United States submitting to arbitration the question whether, taking into consideration the stipulations of the treaty between the United States and

Panama, and the *status quo* of Panama, as thereby recognized, the Government of Colombia or the Government of the United States is the owner of the reversionary rights of the Panama Railway. If the arbitral tribunal shall find that this reversionary right is still owned by the Government of Colombia, then it shall be empowered to assess and award, and it shall assess and award, the amount of indemnity which shall be paid by the Government of the United States to the Government of Colombia for such right, and such sum so awarded shall be paid by the United States within one year from the date of such award.

Second. The purchase by the United States of the right to build a canal on the Atrato route for \$10,000,000, the said sum of \$10,000,000 to be paid to include also the lease in perpetuity to the Government of the United States of the island of Old Providence and the island of St. Andrews.

Third. The Government of the United States undertakes to act on behalf of the Government of Colombia to bring about an adjustment, by reference to an impartial tribunal of arbitration, or otherwise, of the pending question of the northwestern boundary of Colombia.

And, finally, the ratification (by Colombia) of the Root-Cortes treaty.

If I understand these four parts, it would involve the United States substantially in the payment of \$10,000,000, in addition to its liability under the Root-Cortes treaty. While I think the sum stipulated to be paid is a large one, I believe the advantage of settling the questions is so great that I would not hesitate to recommend such a treaty to the Senate for its ratification.

Sincerely yours,

WILLIAM H. TAFT.

HON. P. C. KNOX,
Secretary of State.

The negotiations started by Mr. DuBois did not bear fruit during the tenure of his office. Time, however, was in favor of a settlement, and, on April 6, 1914, Mr. Thomson was able to conclude on behalf of the United States a treaty with the Colombian plenipotentiaries calculated in the opinion of the contracting parties "to remove all the misunderstandings growing out of the political events in Panama in November, 1903."

The ratification of this treaty was advised and consented to by the Senate on April 20, 1921. It is in the Department of State ready to be exchanged when Colombia shall likewise have approved the treaty and is willing to proceed to an exchange of ratifications.

That this may take place, at no distant date, must surely be the hope of those who wish to see the friendliest of relations exist between the United States of Colombia and the United States of America, and even of those who hesitate to approve the settlement, but who desire the friendliest of relations among the American republics. Rightly or wrongly, the misunderstandings growing out of political events in Panama in November, 1903, are not confined to Colombia. They have to a greater or less degree affected the relations of the republics of the western world. Whatever differences of opinion there may have been as to the propriety of the settlement, it is believed that there will be none as to its immediate and ultimate effect.

JAMES BROWN SCOTT.

SUPERIOR ORDERS AND WAR CRIMES

An Associated Press dispatch from Leipzig, Germany, dated June 4, 1921, announces the acquittal of Lieutenant Karl Neumann, charged with the sinking of the British hospital ship *Dover Castle* by a German submarine under his command. The trial by the German court at Leipzig of Neumann and a few other Germans charged with war crimes, took place as the result of correspondence between the Allies and Germany regarding the execution of the penalty clauses of the Treaty of Versailles (Articles 228 to 230, inclusive).

Lieutenant Neumann, it appears, was in command of a German submarine which sank the British hospital ship *Dover Castle*. At the trial it appears that Neumann admitted sinking the *Dover Castle* in clear weather, but pleaded that he was acting under instructions from the German Government, as the vessel was not keeping to a special channel designated by Germany. It was established to the satisfaction of the court that the submarine commander had acted clearly within the instructions given him by his superiors, and he was for that reason exonerated from criminality. It is reported that in announcing the acquittal of Neumann, the presiding judge stated that all civilized nations recognize the principle that a subordinate is covered by the orders of his superiors; that the accused had carried out his orders without in any way exceeding them, and that there was nothing to prove that he had been guilty of particular cruelty as alleged in the Allies' accusations. The presiding judge added that, in the opinion of the court, there was not the slightest doubt that Lieutenant Neumann's orders were justified.

This decision will no doubt be disappointing to those who expected that the penalty clauses of the Treaty of Versailles would result in at least partial retribution for the high crimes and misdemeanors against civilization and humanity committed by the German naval and land forces in the conduct of the war. These clauses were inserted in the treaty under great pressure from the populations in the belligerent countries who had been the chief sufferers from the barbarous conduct of the war. In fact, Mr. Lloyd George was returned to power in the parliamentary elections of 1918 upon a platform the principal plank of which was the punishment of those responsible for the war and for the crimes committed during the war. The infliction of police court sentences by a German court on a few subordinates in lieu of the condign punishment of the real culprits higher up offers little satisfaction to those who believed that the penalty clauses of the Treaty of Versailles were a step in the right direction in providing a sanction for that branch of international law dealing with the laws of war.

The acquittal of Lieutenant Neumann of an act clearly prohibited by international treaty and reprehensible to the elementary instincts of humanity, on the specific ground that he was not responsible because he

acted within orders of his Government makes it, of course, impossible to punish any of the submarine commanders who acted in accordance with the instructions of their government. The same principle will logically apply to the German officers who were guilty of the violations of the laws of land warfare and those who wantonly devastated Belgium and France and Serbia, and shamefully deported their populations, can doubtless establish that these acts of barbarism were committed by orders of those higher up.

But the failure to carry out the penalty clauses of the Treaty of Versailles, even in the small measure in which it has been attempted, is not to be attributed entirely to the German judges at Leipzig. It was only necessary for Lieutenant Neumann to turn to the rules of war issued by the British Government to justify his plea that he was not responsible because he acted under superior orders. The British Manual of Military Law, issued in 1914 and reprinted in 1917, after enumerating all the possible categories of war crimes, provides as follows in Article 443:

Members of armed forces who commit such violations of the recognized rules of warfare as are ordered by their government or by their commander are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such order if they fall into his hands, but otherwise he may only resort to the other means of obtaining redress.

The foregoing article was substantially copied into the Rules of Land Warfare, approved by the General Staff of the United States Army and published on April 25, 1914, for the information and government of the armed land forces of the United States. Article 366 reads as follows:

Individuals of the armed forces will not be punished for these offences in case they are committed under orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall.

These articles appear to contain a new and untried provision inserted in the war manuals for the first time in 1914.¹ The rule does not represent any decided weight of opinion outside of military circles. Among the writers on international law, Professor Oppenheim seems to be alone in defending it. In Section 253 of his work on *International Law* (1912), he says:

Violations of rules regarding warfare are war crimes only when committed without an order of the belligerent government concerned. If members of the armed forces commit violations *by order* of their government, they are not war criminals and may

¹ See Bellot, "War Crimes," Papers read before the Grotius Society, Vol. II, p. 47, who states that the proviso occurs in no previous edition of the British Manual of Military Law. Neither is such a proviso found in Lieber's Instructions for the Government of Armies of the United States in the Field, which were supplanted by the present Rules of Land Warfare.

not be punished by the enemy; the latter may, however, resort to reprisals. In case members of forces commit violations ordered by their commanders, the members may not be punished, for the commanders are alone responsible, and the latter may, therefore, be punished as war criminals on their capture by the enemy.

The rule is vigorously assailed by Phillipson in his *International Law and the Great War* (1915), who replies:

It has been contended in some quarters that a combatant's acts, no matter how heinous, outrageous, and abominable, do not possess a criminal character if they are committed under orders from superior officers. But this argument carried to its logical conclusion would lead to ineptitude and absurdity; the successive shifting of responsibility would exculpate every one until we reached the ultimate cause—in the case of Germany let us say, for example, the Kaiser. Can it, then, be seriously held that several millions of men may act contrary to law established, and perpetrate horrors and atrocities, and that they should be considered entirely guiltless on the ground that they carried out the admittedly illegitimate commands of their supreme authority? The safety and stability of a nation or of a family of nations are incompatible with such an exaggerated and preposterous notion of vicarious responsibility.

In further illustration of this conflict of opinion, reference may be made to the paper read by Commander Sir Graham Bower, late of the Royal Navy, before the Grotius Society of London, on May 27, 1915,² in which he denies that the submarine officers and crews captured by Great Britain can be punished for sinking merchant ships contrary to the laws of war and humanity, because the German Government accepted responsibility for their acts. The opposite view was maintained before the same Society on March 24, 1916, by Dr. Hugh H. L. Bellot, who demanded that not only the instigators but also the actual perpetrators of the more heinous offences against the usages of war be brought to trial. Dr. Bellot cited the treatment of Captain Fryatt, convicted of a war crime by a German court martial and executed as a war criminal on July 27, 1916, as a refutation of the German contention that obedience to superior orders renders immune the perpetrator of a war crime.³

Judicial opinion, in so far as it exists on the subject, also seems to be divided. The question of the responsibility of a military officer in damages for the capture of a vessel under an illegal order from the Navy Department during the limited hostilities between France and the United States in 1799, came up for decision by the Supreme Court of the United States in 1804, in the case of the *Flying Fish* (2 Cranch 170), and Chief Justice Marshall, after weighing carefully the principle which should govern this

² "The Laws of War; Prisoners of War and Reprisals," Papers read before the Grotius Society, Vol. I, p. 25.

³ *Ibid.*, Vol. II, pp. 54-55. For the trial of Captain Fryatt, see the editorial by J. B. Scott in this JOURNAL, Oct., 1916 (Vol. 10), p. 865.

For French practice during the war, and opinion on the subject, see J. W. Garner, "Punishment of offenders against the laws and customs of war," this JOURNAL, Jan., 1920 (Vol. 14), p. 70 at p. 83 *et seq.*

class of cases, followed the common law rule that an officer who commits an unlawful act pursuant to an illegal order is not protected by such an order from personal responsibility. The Chief Justice said:

I confess, the first bias of my mind was very strong in favor of the opinion, that though the instructions of the executive could not give a right, they might yet excuse from damages. I was much inclined to think that a distinction ought to be taken between acts of civil and those of military officers; and between proceedings within the body of the country and those on the high seas. That implicit obedience which military men usually pay to the orders of their superiors, which, indeed, is indispensably necessary to every military system, appeared to me strongly to imply the principle, that those orders, if not to perform a prohibited act, ought to justify the person whose general duty it is to obey them, and who is placed by the laws of his country in a situation which, in general, requires that he should obey them. I was strongly inclined to think that where, in consequence of orders from the legitimate authority, a vessel is seized, with pure intention, the claim of the injured party for damages would be against that government from which the orders proceeded, and would be a proper subject for negotiation. But I have been convinced that I was mistaken, and I have receded from this first opinion. I acquiesce in that of my brethren, which is that the instructions cannot change the nature of the transaction, nor legalize an act which, without those instructions, would have been a plain trespass.

A contrary view was later taken by Judge Story, speaking for the same court, in a case which involved the responsibility of a soldier who disobeyed a valid order on the ground that he regarded it as illegal. In *Martin v. Mott*, 1827 (12 Wheaton 28), Judge Story held that,

The service is a military service, and the command, of a military nature; and in such cases, every delay, and every obstacle to an efficient and immediate compliance, necessarily tend to jeopardize the public interests. While subordinate officers or soldiers are pausing to consider whether they ought to obey, or are scrupulously weighing the evidence of the facts upon which the commander-in-chief exercises the right to demand their services, the hostile enterprise may be accomplished, without the means of resistance.

The subject is discussed by Dicey in connection with the suppression of riots and rebellions. He concludes that the matter is one which has never been absolutely decided, but quotes with approval the following passage from Mr. Justice Stephens' *History of Criminal Law of England*, pp. 205-206, as nearly correct a statement of the rule as the authorities make it possible to provide:

The doctrine that a soldier is bound under all circumstances whatever to obey his superior officer would be fatal to military discipline itself, for it would justify the private in shooting the colonel by the orders of the captain, or in deserting to the enemy on the field of battle on the order of his immediate superior. I think it is not less monstrous to suppose that superior orders would justify a soldier in the massacre of unoffending civilians in time of peace, or in the exercise of inhuman cruelties, such as the slaughter of women and children, during a rebellion. The only line that presents itself to my mind is that a soldier should be protected by orders for which he might reasonably believe his officer to have good grounds. The inconvenience of being subject to two jurisdictions, the sympathies of which are not unlikely to be opposed

to each other, is an inevitable consequence of the double necessity of preserving on the one hand the supremacy of the law, and on the other the discipline of the army.⁴

Birkhimer states that while such a rule may sometimes appear to be unjust, "it is based on public policy and flows from the consideration that society should be protected from the evil-doer, who may not be permitted to evade the consequences of his unlawful acts by pleading the orders of anyone, for no one has a right either to set the laws at defiance or authorize another to do so. Still," he says, "as regards members of the military profession, the workings of the rule are liable to be so harsh that judges are moved sometimes not only to temper justice with great mercy, but, so far as practicable, to transfer the responsibility to the officer who issued the illegal order." "No wonder," he continues, "that courts, when they pass judgment in such cases, yield a willing ear to the promptings of humanity, and place, so far as possible, responsibility for violations of the law upon superiors who initiate them, rather than upon subordinates whose actions, in carrying into execution the orders of those whom the law has placed over them, are wholly involuntary."⁵

The same author thereupon draws the following distinction between the responsibility of superiors and subordinates:

A subordinate stands in a different position from the superior when he obeys, and may be absolved from liability for executing an order which it was criminal to give. The question is, Had accused reasonable cause for believing in the necessity of the act which is impugned? and in determining this point a soldier may take the orders of the person in command into view as proceeding from one who is better able to judge and well informed; and, if the circumstances are such that the command may be justifiable, he should not be held guilty for declining to decide that it is wrong, with the responsibility incident to disobedience, unless the case is so plain as not to admit of a reasonable doubt. A soldier consequently runs little risk in obeying any order which a man of common sense so placed would regard as warranted by the circumstances.⁶

At the close of the Civil War in the United States, the indignation aroused in the North by the treatment of prisoners of war at Andersonville, Georgia, resulted in the trial of the commandant of that prison, Henry Wirz, for crimes which it was alleged were committed by him or by his orders. One of the pleas of the accused was that he merely acted as a subordinate in carrying out the orders of the commander of the post. The Judge Advocate admitted that the accused acted under orders, but replied, "A superior officer cannot order a subordinate to do an illegal act, and if a subordinate obey such an order and disastrous consequences result, both the superior and the subordinate must answer for it. General Winder could no more command the prisoner to violate the laws of war than could the prisoner do so without orders." Wirz was convicted on

⁴ Dicey, *Law of the Constitution*, pp. 301-302.

⁵ Birkhimer, *Military Government and Martial Law*, pp. 561-562.

⁶ *Ibid.*, p. 535.

all counts and executed in the arsenal grounds at Washington on November 10, 1865.

In the course of his argument in the Wirz case, the Judge Advocate called attention to a case in Scotland where an officer was convicted of murder in a Scotch court for killing a French prisoner of war, under the following circumstances:

Ensign Maxwell was tried in 1807, before the High Court of Justiciary of Scotland, for the murder of Charles Cottier, a French prisoner of war, at Greenlow, by improperly ordering John Low, a sentinel, to fire into a room where Cottier and other prisoners were confined, and so causing him to be mortally wounded. Maxwell was in charge of three hundred prisoners of war; the building in which they were confined was of no great strength and afforded some possibility of escape; to prevent which, the prisoners being turbulent, an order was given that all lights were to be put out at 9 o'clock; if not done at the second call, the guard would fire upon the prisoners, due notice having been given them. On the night in question there was a tumult in prison. Maxwell's attention being drawn to it, he observed a light burning beyond the appointed hour and twice ordered it to be put out; this order not being obeyed, he directed the sentry to fire, which he did, Cottier receiving a mortal wound. Maxwell was found guilty, with recommendation to mercy, and was sentenced to nine months' imprisonment." (Scott's Dictionary, p. 267.)

Military men naturally seek to protect themselves as much as possible from any personal consequences of their acts; hence these sweeping amnesties for whatever is committed under orders in the present codes of military law. It is submitted that this is a subject which ought to receive careful consideration by any conference, private or governmental, which undertakes to deal with the restatement of the laws of war. The unqualified acceptance of the principle that a subordinate is not responsible for what he does under orders of his superiors will make it practically impossible to enforce proper penalties for violations of the laws of war designed to humanize, if such be possible, that grim recourse.

GEORGE A. FINCH.

CURRENT NOTES

THE ANNUAL MEETING OF THE SOCIETY

Pursuant to the announcement printed in the January number of the JOURNAL, and to the program subsequently sent to the members, the Society held its first meeting since 1917 at Washington, on April 27-30, last. The meetings were well attended and the attendance was in fact so large that it overtaxed the accommodations which the committee had provided.

The general topic, "The Advancement of International Law," was considered in its fundamental aspects by the Honorable Elihu Root, President of the Society, in his presidential address delivered on opening the meeting on Wednesday evening, April 27. The address was not only well received, but has been pronounced by many who heard it as Mr. Root's greatest utterance on the subject of international law and relations. The address was extensively printed in the press of the country.

The Honorable Manoel de Oliveira Lima, former Minister of Brazil to Japan, Sweden, Belgium and Venezuela, also spoke on the same evening upon the subject of "The Reconstruction of International Law." His remarks were very interesting as giving the Latin-American point of view.

The topic was taken up more in detail the following day. On the morning of Thursday, April 28th, Mr. James Brown Scott spoke upon the "Advancement of International Law essential to an International Court of Justice."

The main consideration of the topic in detail was assigned to four subcommittees appointed in advance to submit reports to the Society. The subjects assigned to the subcommittees were as follows:

Subcommittee No. 1: To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

Subcommittee No. 2: To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

Subcommittee No. 3: To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

Subcommittee No. 4: To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

A special subject to illustrate the work of each subcommittee was

assigned to particular speakers. Following Dr. Scott's address on Thursday morning, Mr. Lester H. Woolsey, former Solicitor for the Department of State, read a paper on the "Munitions Trade" as illustrative of the work of Subcommittee No. 1. Mr. Charles Cheney Hyde, Professor of International Law in Northwestern University, read a paper on "Conditional Contraband" as illustrative of the work of Subcommittee No. 2, and Mr. George Grafton Wilson, Professor of International Law in Harvard University, read a paper on "Continuous Voyage" as illustrative of the work of Subcommittee No. 3. Papers illustrative of the work of Subcommittee No. 4 were read at the evening session of Thursday, the 28th, as follows: "International Criminal Jurisdiction," by Mr. Jesse S. Reeves, Professor of Political Science in the University of Michigan; "The Status of International Cables in War and Peace," by Mr. Elihu Root, Jr., of the New York Bar; "The International Regulation of Aërial Navigation," by Mr. Arthur K. Kuhn, of the New York Bar.

The Committee for the Advancement of International Law held a general meeting on the morning of Friday, April 29th, to coordinate the work of the subcommittees. The subcommittees met during the afternoon of the same day and completed their reports, which were submitted to the Society at its general meeting on the evening of the 29th. The reports were submitted by the following Chairmen: Mr. Charles Noble Gregory, Subcommittee No. 1; Dr. Harry Pratt Judson, Subcommittee No. 2; Hon. Simeon E. Baldwin, Subcommittee No. 3; Professor Paul S. Reinsch, Subcommittee No. 4.

At the closing session of the Society on Saturday morning, April 30th, the reports were received and the Committee for the Advancement of International Law continued with instructions to submit further reports to the Society at its next meeting.

The Executive Council held two sessions during the meeting, the first on the afternoon of Thursday, April 28th, and the second on the morning of Saturday, April 30th, after the adjournment of the Society. In addition to the performance of its routine work, it adopted a recommendation, which was presented to the Society on the morning of April 30th, that the constitution of the Society be amended so as to provide that hereafter members of the Council shall not be eligible for reelection until after the lapse of one year from the expiration of their terms of office. This amendment will be submitted to and acted upon by the Society at its next annual meeting.

At the business meeting of the Society held on Saturday, April 30th, the amendment to the constitution proposed by the Council on November 13, 1920, relating to the charge for the Society's publications, was adopted. This amendment was set forth and explained in the January, 1921, number of the JOURNAL, page 76.

The members of the Society in attendance upon the meeting were

received at the White House by President Harding at 2.30 o'clock on the afternoon of Friday, April 29th.

The meeting closed with a banquet at the Shoreham Hotel on Saturday evening, April 30th. Mr. Root presided as toastmaster, and the speakers were Dr. Nicholas Murray Butler, President of Columbia University in the City of New York, and the Honorable Charles Evans Hughes, Secretary of State of the United States. His Serene Highness, the Prince of Monaco, had accepted an invitation to be a guest at the banquet, but was prevented by illness from attending.

All of the papers, discussions and reports will be printed as usual in the volume of annual proceedings and sent to all members who subscribe. The subscription price is fixed by the Executive Council at \$1.50.

The following officers and committees were elected for the ensuing year:

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Charles Noble Gregory, Chairman; Edwin D. Dickinson, Charles B. Elliott, Amos S. Hershey, David J. Hill, George A. King, Harry Shepard Knapp, Robert Lansing, John D. Lawson, Harold S. Quigley, Gordon E. Sherman.

Subcommittee No. 2: To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

Harry Pratt Judson, Chairman; Edwin M. Borchard, Sterling E. Edmunds, William I. Hull, Howard Thayer Kingsbury, Arthur K. Kuhn, John H. Latané, Raleigh C. Minor, Charles H. Stockton, James L. Tryon, Quincy Wright.

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Subcommittee No. 4: To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

Paul S. Reinsch, Chairman; Cephas D. Allin, Francis W. Aymar, George C. Butte, W. C. Dennis, Edward C. Eliot, Charles G. Fenwick, Edward A. Harriman, W. R. Manning, James H. Oliver, J. H. Ralston, Jesse S. Reeves, Ellery Cory Stowell, Eugene Wambaugh, Thomas Raeburn White, Frank H. Wood.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD FEBRUARY 15, 1921—MAY 15, 1921.

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary Papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review. *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Cur. Hist.*, Current History (New York Times); *Daily digest*, Daily digest of reconstruction news; *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario oficial (Brazil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenössische gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice. *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

August, 1920.

- 22 GREAT BRITAIN—GREECE. Agreement relating to suppression of capitulations in Egypt signed at Athens. *G. B. Treaty series*, 1921, No. 5; *Cmd.* 1237.
- 27 ARGENTINA—VENEZUELA. Argentina ratified the arbitration treaty of July 22, 1911, which Venezuela ratified on June 12, 1912. *B. O. (Argentina)*, Nov. 26, 1920; *P. A. U.*, April, 1921, p. 398.

September, 1920.

- 6 INTERNATIONAL DANUBE COMMISSION. Renewed its session in Paris to discuss regulation of functions of Commission and projects for administration of Danube. *Temps*, Sept. 8, 1920, p. 1.

November, 1920.

- 12 to Feb. 26, 1921 JAPAN—UNITED STATES. Texts of salient portions of correspondence on Yap claims published, including note of Nov. 12, 1920, from United States, reply of Japan of Nov. 19, note from United States of Dec. 10, and reply of Japan of Feb. 26. *Times*, Apr. 20, 1921, p. 9.
- 17 HONDURAS—NICARAGUA. Agreement signed regarding political refugees and friendly solution of boundary difficulties. *P. A. U.*, April, 1921, p. 398.

- 30 DENMARK—GREAT BRITAIN. Agreement respecting matters of wreck came into force. *G. B. Treaty series*, 1921, No. 4; *Cmd.* 1223.

December, 1920.

- 4 AUSTRIA—BELGIUM. Belgium notified Austria that following conventions concluded with Austro-Hungarian monarchy were again put into force: (1) Extradition treaty of Jan. 12, 1881; (2) Agreement of April 30, 1871, relating to transfer of documents of the deceased. *Monit.*, Feb. 17, 1921, p. 1236.
- 5 FRANCE—GREAT BRITAIN. Decree issued in France concerning money-order conventions of Dec. 8, 1882, Sept. 21, 1887, and June 30, 1906. *J. O.*, Dec. 10, 1920, p. 20285.
- 21 AUSTRIA—GREAT BRITAIN. By an Order in Council, Great Britain notified Austria that certain articles of the Copyright act of April 24, 1911, are again in force. *London Ga.*, Dec. 31, 1920, p. 12705.
- 21 GREAT BRITAIN—GREECE. By an Order in Council, Great Britain notified Greece that certain articles and sections of Copyright Act of 1911 are in force between the two countries. *London Ga.*, Dec. 31, 1920, p. 12706.
- 28 GERMANY—SWITZERLAND. Ratifications of the provisional aerial traffic agreement and protocol signed at Berne Sept. 14, 1920, exchanged at Berne. Text: *E. G.*, Jan. 12, 1921, p. 25.
- 28 SOVIET RUSSIA—UKRAINE. Military and economic treaty signed at Moscow. Text: *Soviet Russia*, Feb. 26, 1921, p. 219.

January, 1921.

- 8 VENEZUELA. Decree issued announcing establishment of Venezuelan section of the Inter-American High Commission. *Venezuela, Gaceta*, Jan. 8, 1921, No. 14264.
- 15 BULGARIA—FRANCE. Notification sent Sofia that certain pre-war contracts are maintained, in accordance with Art. 180, paragraph *b*, Treaty of Neuilly-sur-Seine. *J. O.*, Mar. 3, 1921, p. 2766.
- 27 BELGIUM—BULGARIA. Belgium notified Bulgaria that the convention of extradition signed at Sofia, Mar. 28, 1908, is again in force. *Monit.*, Feb. 28/Mar. 1, 1921, p. 1691.
- 29 AUSTRIAN PEACE TREATY, Saint Germain, Sept. 10, 1919. Ratification deposited by Nicaragua. *J. O.*, Apr. 8, 1921, p. 4498.
- 29 BELGIUM—PORTUGAL. Ratifications exchanged at Lisbon of the Declaration governing importation of Portuguese wines, signed at Lisbon, Jan. 22, 1920, modifying Art. 2 of the Declaration for provisional regulation of commercial relations, signed Dec. 11, 1897. Text of declaration: *Monit.*, Feb. 28/Mar. 1, 1921, p. 1690.
- 31 FRANCE—HUNGARY. France informed Hungary that, conforming to paragraph *e* of Art. 231 of the Treaty of Trianon, the provisions of that article and its annex shall be applicable between France,

its colonies and protectorates, and Hungary, provided ratifications have been exchanged by July 1, 1921. *J. O.*, Apr. 3, 1921, p. 4154.

February, 1921.

- 6 FRANCE—GERMANY. Interpretation of regulations of Mixed Arbitration Tribunal made public. *Reichs. G.*, Feb. 15, 1921, No. 17, p. 160-162.
- 6 GERMANY—GREECE. Proclamation issued announcing renewal of convention regarding movable property, signed Athens, Dec. 1, 1910, dating from June 30, 1920. *Reichs. G.*, Feb. 12, 1921, No. 16, p. 149; *Deutsch. Reichs.*, Feb. 14, 1921, No. 37.
- 10 BOLIVIA—UNITED STATES. Bolivian Government recognized by the United States. *Cur. Hist.*, April, 1921, 14: 158.
- 10 HAGERUP, GEORGE FRANCIS. Minister from Norway to Sweden, died at age of 68 years. *Figaro*, Feb. 10, 1921, p. 2.
- 15 FRANCE—GERMANY. Germany promulgated law approving convention signed at Baden-Baden, Mar. 3, 1920, relative to payment of pensions to residents of Alsace-Lorraine. *Reichs. G.*, 1921, No. 19, p. 176-185.
- 15 SERB-CROAT-SLOVENE STATE. Yugoslavia formally complained to Supreme Council that Bulgaria was not carrying out terms of Treaty of Neuilly, particularly those clauses relating to restitutions to be made to Serbia. *Cur. Hist.*, April, 1921, 14: 173.
- 17(?) BOLIVIA—GREAT BRITAIN. Great Britain recognized new government of Bolivia. *Times*, Feb. 18, 1921, p. 9.
- 18 GERMANY—SOVIET RUSSIA. Provisional protocol signed at Moscow relative to commercial traffic, prisoners of war and rights of representation. *Temps*, Mar. 20, 1921, p. 6.
- 19 FRANCE—GERMANY. Decree issued in France putting into force the convention signed at Baden-Baden on Mar. 3, 1920, relative to payment of pensions to residents of Alsace-Lorraine and to conditions of application of Art. 62 of Treaty of Versailles, and ratified by both countries at Berlin, Feb. 14, 1921. Text of convention: *J. O.*, Feb. 24, 1921, p. 2455.
- 19 FRANCE—POLAND. Political and economic agreement signed, confirming and developing the mutual declaration of Feb. 5. Summary: *Temps*, Feb. 22, 1921, p. 1.
- 21 to March 14. COSTA RICA—PANAMA. Costa Rican army demanded surrender of Coto, Panama, on Feb. 21. Notes sent to Costa Rica and Panama by Secretary Colby on Feb. 28. Replies received on March 5. Secretary Hughes suggested solution of dispute by notes to both countries on March 5. Armistice arranged on March 7. *Cur. Hist.*, April, 1921, 14: 148. Text of reply of Panama to Colby note of March 3 and Hughes note of March 5 made public. *N. Y. Times*,

- March 11, 1921, p. 3. Note sent from United States to Panama on March 15, replying to Panama note of March 4. Text: *N. Y. Times*, March 18, 1921, p. 1. Notes exchanged on March 19 between President Porras and President Harding. Texts: *N. Y. Times*, March 20, 1921, p. 1. On April 1, notice served on Panama that attitude of United States relative to White award would not be changed. *Wash. Post*, April 2, 1921, p. 6. Reply of Panama to Hughes' note of March 15 approved by National Assembly. *N. Y. Times*, April 8, 1921, p. 1. Secretary Hughes' reply to protest against White award delivered to Panama on May 2. Text: *N. Y. Times*, May 3, 1921, p. 1.
- 21 LEAGUE OF NATIONS COUNCIL. Twelfth session opened in Paris. *N. Y. Times*, Feb. 22, 1921, p. 3.
- 21 to Mar. 12. NEAR EAST CONFERENCE. Opened at London, Feb. 21 to discuss modification of Treaty of Sèvres. Delegates were present from Greece and the two Turkish governments (Constantinople and Angora). Greek delegates agreed to consider proposal of Supreme Council to accept certain changes in status of Thrace and Smyrna, now occupied by Greece, while Turkish delegates agreed to accept these changes and other concessions with certain reservations. *Cur. Hist.*, April, 1921, 14: 176. Proposals handed to Turkish and Greek delegations on March 12. Text: *Cur. Hist.*, May, 1921, 14: 347.
- 21 YAP MANDATE. Note of protest against Japanese mandate sent to League of Nations Council by United States Government. *N. Y. Times*, Feb. 25, 1921, p. 3. Council's reply of March 1 admitted American contention regarding right of consultation on all mandate drafts, but declared right of allocation pertains only to Supreme Council. Text of note and reply: *Cur. Hist.*, April, 1921, 14: 103.
- 23 BELGIAN LOAN. Letter dated June 16, 1919, sent to U. S. Congress embodying agreement made with Belgium by British and French premiers and President Wilson on national loans to Belgium. Text: *S. Doc. 413*, 66th Cong., 3d sess.
- 24 POLAND—SOVIET RUSSIA. Treaty providing for release of prisoners and hostages, including all Polish and Russian nationals who desire to return to their homes, was signed at Riga. *Times*, Feb. 28, 1921, p. 9.
- 25(?) COSTA RICA—GREAT BRITAIN. Ultimatum delivered to Costa Rica demanding payment of bonded debt and confirmation of so-called Amory oil concessions obtained from former Tinoco government. *Wash. Post*, Feb. 26, 1921, p. 1.
- 26(?) LEAGUE OF NATIONS COUNCIL. Approved Bourgeois report on disarmament. Summary: *Temps*, Feb. 27, 1921, p. 2.
- 26 PERSIA—SOVIET RUSSIA. Treaty signed at Moscow providing for withdrawal of Russian troops from Persia, dissolution of Soviet Republic

- of Gilan, and maintenance of Persian independence. *Times*, Mar. 26, 1921, p. 9. Text: *Nation* (N. Y.), May 11, 1921, p. 696; *Soviet Russia*, Apr. 30, 1921, p. 426.
- 28 AFGHANISTAN—SOVIET RUSSIA. Treaty signed at Moscow to strengthen friendly relations and confirm independence of Afghanistan. Text: *Nation* (N. Y.), May 11, 1921, p. 698.
- 28(?) MEXICO. Executive decree issued prohibiting entry of foreign laborers into the country during present scarcity of employment, notably in the oil regions. Text: *Press notice*, Mar. 19, 1921.
- 28 RHINE COMMISSION. Commission consisting of representatives of Belgium, France, Great Britain, Holland, Italy, Switzerland and the German states met at Strasbourg to consider Rhine police, revision of Mannheim Act of 1868, and works of the port as provided in Art. 358 of Treaty of Versailles. *Temps*, Mar. 1, 1921, p. 2.

March, 1921.

- 1 AFGHANISTAN—TURKEY. Treaty signed in Moscow establishing diplomatic and consular relations, and providing for mutual assistance in event of attack by a third Power. *Times*, Apr. 16, 1921, p. 7.
- 1-7 INTERALLIED CONFERENCE OF GERMAN REPARATIONS. Opened in London on Mar. 1. Germany's counter-proposals to Allied demands at Paris conference, submitted by Dr. Simons, were declined on Mar. 3. On Mar. 7 Germans submitted new proposals, which were again declined. Dr. Simons replied that Germany would agree to Paris decisions for five years, subject to Upper Silesia remaining German. The conference then adjourned and German delegation left London on Mar. 8. Text of proposals and speeches: *N. Y. Times*, Mar. 4, 1921, p. 1; *Times*, Mar. 8, 1921, p. 11; *Cur. Hist.*, April, 1921, 14: 26, 33.
- 1 NICHOLAS I OF MONTENEGRO. Died at Antibes, aged 79 years. *Temps*, Mar. 3, 1921, p. 5.
- 1 YAP MANDATE. Reply of League of Nations Council to Colby letter of Feb. 21, sent to Washington. Text: *N. Y. Times*, Mar. 8, 1921, p. 10.
- 2 HUNGARY—POLAND—RUMANIA. Formal alliance against Bolshevism signed at Budapest. *Cur. Hist.*, April, 1921, 14: 171.
- 2 POLAND—RUMANIA. Political agreement signed. *Cur. Hist.*, May, 1921, 14: 219.
- 3 MIGRATORY BIRDS. President Wilson issued proclamation further amending regulations of July 31, 1918. *Proclamation* No. 1588.
- 4 GERMAN REPARATIONS. Berlin addressed note to Secretariat of League of Nations protesting against Allies' penalties. Text: *Times*, Mar. 23, 1921, p. 9. Reparations Commission on Mar. 16 called upon Germany to prepare to pay by May 1 the balance of the 20,000,000,000

- gold marks due under terms of treaty. Text: *Cur. Hist.*, April, 1921, 14: 162. German reply declared unacceptable. *N. Y. Times*, Mar. 26, 1921, p. 2. On Mar. 23, German Foreign Office sent memorandum on reparations to United States government. Reply of Mar. 29 contained formal declaration of American policy. Text of both notes: *N. Y. Times*, Apr. 5, 1921, p. 2; *Wash. Post*, Apr. 5, 1921, p. 4. On April 20, Germany addressed memorandum to President Harding requesting mediation on reparations. Proposal declined on April 21. Text of both notes: *N. Y. Times*, Apr. 22, 1921, p. 1; *Wash. Post*, Apr. 22, 1921, p. 1. Reply made public on April 27 contained new proposals. Text: *Temps*, Apr. 28, 1921, p. 1; *N. Y. Times*, Apr. 27, 1921, p. 1. On April 30, Supreme Council met in London to consider reparations question. *Times*, May 2, 1921, p. 8. Secretary Hughes' note of May 2 informed Dr. Simons that German reparation counter-proposals are unacceptable as a basis for discussion. Text: *N. Y. Times*, May 3, 1921, p. 1. Allied ultimatum sent to Berlin on May 5 required reply by May 12. Text: *Wash. Post*, May 6, 1921, p. 1, 5. *Times*, May 6, 1921, p. 9. Allied ultimatum accepted on May 10 by Reichstag by vote of 221—175. *Wash. Post*, May 11, 1921, p. 1; *N. Y. Times*, May 11, 1921, p. 1. Unconditional acceptance of Entente reparations terms delivered to Lloyd George on May 11. Text: *N. Y. Times*, May 12, 1921, p. 1.
- 4 GERMAN WAR CRIMINALS. Reichstag adopted bill providing for trial of war criminals named in the Entente's list. *N. Y. Times*, May 5, 1921, p. 3.
 - 7 ARGENTINA—UNITED STATES. Commercial travelers' convention signed Oct. 22, 1920, ratified by the U. S. Senate. Text: *Cong. Rec.*, Mar. 7, 1921, p. 14.
 - 7 GREAT BRITAIN—UNITED STATES. Convention of March 2, 1899, ratified by United States Senate. Clause 3 of Article 4 relating to tenure and disposition of property was therefore made to apply to Hawaii. Text of treaty and supplement and correspondence: *Cong. Rec.*, Mar. 7, 1921, p. 16.
 - 7 GREECE—UNITED STATES. Commercial agreement signed Oct. 18, 1920, modifying the treaty of Dec. 22, 1837, was ratified by the United States Senate. Text: *Cong. Rec.*, Mar. 7, 1921, p. 14.
 - 7 PORTUGAL—UNITED STATES. Agreement signed at Lisbon, Sept. 14, 1920, extending duration of arbitration convention of Apr. 6, 1908, was ratified by the United States Senate. Text: *Cong. Rec.*, Mar. 7, 1921, p. 16.
 - 8 ALLIED OCCUPATION OF GERMAN TOWNS. Düsseldorf, Duisburg and Ruhrort occupied by French, British and Belgian troops as penalty for non-observance of treaty. *Cur. Hist.*, Apr., 1921, 14: 32.

- 9 FRANCE—TURKEY. Agreement signed in London for the immediate cessation of hostilities, evacuation of Cilicia, exchange of prisoners and protection of Armenians, etc. Summary: *Temps*, Mar. 13, 1921, 1, 4. Twelve points in agreement: *Cur. Hist.*, May, 1921, 14: 203. Text: *Contemp. R.*, May, 1921, p. 677.
- 10 FRANCE—GREAT BRITAIN. President of France promulgated the convention signed Sept. 8, 1919, completing the agreement of June 14, 1898, and the declaration of Mar. 21, 1899, fixing the frontiers of their possessions and zones of influence east and west of the Niger. *J. O.*, Apr. 10, 1921, p. 4562.
- 11-18 GERMAN REPARATION (recovery) BILL. Introduced in Parliament on Mar. 11, became a law on March 18 by vote of 215—132, and went into effect on March 31. *Cur. Hist.*, May, 1921, 14: 206.
- 11 LITHUANIA—POLAND. Lithuania accepted League Council proposal for direct negotiations for settlement of territorial dispute. Meetings to be held in Brussels. *N. Y. Times*, Mar. 12, 1921, p. 1.
- 12 CANADA—FRANCE. Decree issued in France promulgating the commercial arrangement signed at Paris, Jan. 29, 1921. Text of agreement: *J. O.*, Mar. 13, 1921, p. 3135; *Bd. of Trade J.*, Mar. 17, 1921, p. 306.
- 12 ITALY—TURKEY. Economic agreement signed at London, regulating the conditions of Italian zone of influence in Turkey, and providing for withdrawal of Italian troops from Ottoman territory. Summary: *Cur. Hist.*, May, 1921, 14: 205; *Temps*, Mar. 14, 1921, p. 2.
- 15 BELGIUM—GREAT BRITAIN. Convention to facilitate traffic across East Africa, signed at London. Text: *Monit.*, Apr. 23, 1921, p. 3398.
- 15 SPAIN. Spanish Cabinet decided to suspend all commercial treaties in force, to continue inoperative until new customs tariffs have been promulgated. *Wash. Post*, Mar. 18, 1921, p. 6.
- 16 GREAT BRITAIN—SOVIET RUSSIA. An agreement for opening of trade relations and a declaration respecting recognition of claims were signed at London. Note from Sir Robert Horne accompanying the agreement served notice upon Soviet authorities to stop clandestine work for overthrow of British rule in India. Text of agreement: *Bd. of Trade J.*, Mar. 17, 1921, p. 295; *Cur. Hist.*, May, 1921, 14: 257; *Cmd.*, 1207.
- 16 PERMANENT COURT OF INTERNATIONAL JUSTICE. League of nations appealed to all members to take measures for signature and ratification of the protocol establishing the court. *Times*, Mar. 18, 1921, p. 9.
- 16 SOVIET RUSSIA—TURKEY. Treaty signed at Moscow between Soviet Russia and Turkish Nationalists establishing friendly relations, with agreement of Russia to recognize Constantinople as capital of Turkey, of Turkey to give Batum to Georgia, and for division of Ar-

- menia among Georgia, Azerbaidjan and Turkey. *Times*, Mar. 21, 1921, p. 11; *Cur. Hist.*, May, 1921, 14: 351. Summary: *Contemp. R.*, May, 1921, p. 683.
- 16(?) SPAIN—UNITED STATES. Secretary Hughes made diplomatic representations to Spain regarding Spanish law of Apr. 29, 1920, for taxing foreign companies operating in Spain. *N. Y. Times*, Mar. 17, 1921, p. 12.
- 17 POLAND. Constitution of the republic adopted. Text: *Cur. Hist.*, May, 1921, 14: 358.
- 18 CZECHOSLOVAK REPUBLIC—POLAND—RUMANIA. Defensive alliance formed. *N. Y. Times*, Mar. 19, 1921, p. 10; *Cur. Hist.*, May, 1921, 14: 219.
- 18 GERMAN ARMY. Reichstag passed bill abolishing conscription and fixing strength of army at 100,000 men and of the navy at 15,000 men. *N. Y. Times*, Mar. 20, 1921, p. 2.
- 18 POLAND—SOVIET RUSSIA AND UKRAINE. Political and economic treaty signed at Riga on March 18 between Russia and Ukraine on the one part and Poland on the other. *Times*, Mar. 19, 1921, p. 9. Text: *Nation* (N. Y.), May 18, 1921, p. 720. Ratified by Poland on Apr. 16. *Temps*, Apr. 18, 1921, p. 2. Ratified by Soviet Russia on Apr. 21. *Temps*, Apr. 24, 1921, p. 2.
- 19 FRANCE—GREAT BRITAIN. Convention on mandates in Asia, signed Dec. 23, 1920, made public. Text: *Temps*, Mar. 20, 1921, p. 2; *Cmd.*, 1195.
- 20 BULGARIA. Report of special commission, organized to inquire into the doings of the Radoslavoff Cabinet which forced the country into war on German side, was made public in a volume of 218 pages. *Cur. Hist.*, May, 1921, 14: 353.
- 20 DENMARK—SPAIN. Commercial and navigation convention of July 4, 1893, prolonged for three months. *Ga. de Madrid*, Mar. 24, 1921, p. 918.
- 20 ITALY—SPAIN. Commercial and navigation treaty of Mar. 30, 1914, prolonged for an indefinite period subject to termination on one month's notice by either party. *Ga. de Madrid*, Apr. 18, 1921, p. 235.
- 20 NETHERLANDS—SPAIN. Agreement reached to prolong for three months the commercial declaration of July 12, 1892. *Ga. de Madrid*, Apr. 18, 1921, p. 235.
- 20 SPAIN—SWEDEN. The commercial convention of June 27, 1892, was prolonged for three months. *Ga. de Madrid*, Mar. 24, 1921, p. 918.
- 20 SPAIN—SWITZERLAND. The commercial treaty of Sept. 1, 1906, was prolonged for two months. *Ga. de Madrid*, Mar. 24, 1921, p. 918.

- 21 BELGIUM. Government accepted proposal of Council of League that International Bureau established by the General Act of 1890 for the control of traffic in arms and munitions shall perform similar function as regards Treaty of St. Germain. *L. N. M. S.*, April, 1921, p. 8.
- 21 BRAZIL—GREAT BRITAIN. Treaty promulgated by Brazil establishing permanent international commission to examine all questions in litigation not regulated by previous arrangements. *Temps*, Mar. 23, 1921, p. 1.
- 21 SILESIA. Plebiscite returns gave Germany 713,700 votes and Poland 460,700 votes, approximately 61 per cent in favor of Germany. *Wash. Post*, Mar. 22, 1921, p. 1; *Times*, Mar. 23, 1921, p. 11.
- 23 BELGIUM—GERMANY. Belgian Parliament passed the 50 per cent tax on German imports by vote of 128—19. *Cur. Hist.*, May, 1921, 14: 207.
- 23 CHINESE CONSORTIUM. Formal approval of United States expressed in letter from State Department to J. P. Morgan & Co. *N. Y. Times*, Mar. 30, 1921, p. 17.
- 23 LATVIA—SPAIN. Spain recognized independence of Latvia. *Ga. de Madrid*, Mar. 27, 1921, p. 941.
- 24 FRANCE—UNITED STATES. Decree issued in France promulgating the agreement of July 17, 1919, amending Art. VII of the convention of navigation and commerce, concluded June 24, 1822. *J. O.*, Mar. 26, 1921, p. 3734.
- 24 JAPAN MANDATES. Japan's intentions as mandatory for the former German islands in the Pacific, among them the island of Yap, are outlined in a 700-word communiqué issued by Foreign Office. Summary: *N. Y. Times*, Mar. 26, 1921, p. 2. *Naval Inst. Proc.*, May, 1921, p. 794. Text in part: *Cur. Hist.*, May, 1921, 14: 194.
- 24 SOVIET RUSSIA—UNITED STATES. Communication of Mar. 20 from Russian Government to United States relating to trade resumption made public. Text: *N. Y. Times*, Mar. 24, 1921, p. 1. Reply of United States dated Mar. 25 made public. Text: *N. Y. Times*, Mar. 26, 1921, p. 1. Text of both notes: *Cur. Hist.*, May, 1921, 14: 391-2.
- 25 LATVIA—LITHUANIA. Decision of arbitration commission on boundary dispute made public. *Cur. Hist.*, May, 1921, 14: 267; *Temps*, Apr. 18, 1921, p. 2.
- 26 to Apr. 6. HUNGARY. Ex-Emperor Charles returned to Budapest on Mar. 26 in attempt to regain throne, but was forced to leave the country on April 6. *Cur. Hist.*, May, 1921, 14: 216.
- 29 FAR EASTERN REPUBLIC. Note to American Legation at Peking formally announced the organization at Chita, by constitutional methods, of a new state, the Far Eastern Republic. *Cur. Hist.*, May, 1921, 14: 246.
- 30 AFGHANISTAN—ANGORA. Treaty signed. *Temps*, Apr. 1, 1921, p. 1.

- 30 GERMAN DISARMAMENT. Note of March 18 from Allies to Germany demanding remedy of certain matters by March 31 and German reply of March 26, asking Council of Ambassadors to arbitrate certain questions of disarmament, made public in Berlin on Mar. 30. *Times*, Mar. 31, 1921, p. 7. Premier Briand of France answered German note by saying that all these questions had been settled on Jan. 29 and ordering Germany to carry out Allies' demands or take consequences of refusal. *Cur. Hist.*, May, 1921, 14: 212. Further note to Germany required adoption by May 20 of list of factories permitted to manufacture war material, which was drawn up by Interallied Commission, and withdrawal of licenses from all other factories. *Times*, May 18, 1921, p. 7.
- 30 to Apr. 7 RED CROSS. Tenth international conference held in Geneva. Summary of proceedings and text of three resolutions adopted relating to the limitations of war, a diplomatic conference on an international code of prisoners of war, and the revision of the Convention of Geneva of 1906. *Rev. int. de la Croix-Rouge*, April 15, 1921.

April, 1921

- 1 NORWAY—UNITED STATES. United States Government sent note to Norway stating its readiness to accept arbitration before Hague Permanent Court on Norway's claim for \$14,000,000 for requisitioned ships. *Wash. Post*, Apr. 5, 1921, p. 6; *N. Y. Times*, Apr. 6, 1921, p. 1.
- 4 RUMANIA—SPAIN. Rumania gave notice of its denunciation of the commercial convention of Dec. 1, 1908. *Ga. de Madrid*, Apr. 16, 1921, p. 222.
- 4 YAP MANDATE. Note addressed by Secretary Hughes to France, Great Britain, Italy and Japan, relative to the status of the Island of Yap. Text: *Cur. Hist.*, May, 1921, 14: 192; *N. Y. Times*, Apr. 17, 1921, p. 2.
- 5 GREAT BRITAIN—UNITED STATES. Correspondence in respect to economic rights in mandated territories (concessions for oil in Mesopotamia), including text of Curzon's reply of Feb. 28 to Colby note of Nov. 20, published as *Cmd.* 1226. *Times*, Apr. 6, 1921, p. 9.
- 5 PERSIA—UNITED STATES. New government of Persia which came into power on February 20 sent statement to United States of its policy favoring abrogation of Anglo-Persian treaty and the evacuation of Persia by foreign troops. *N. Y. Times*, Apr. 6, 1921, p. 6; *Cur. Hist.*, May, 1921, 14: 355.
- 6 AUSTRIA. Text of statement published, drawn up by Finance Committee of League, setting forth conditions under which it would undertake task of reestablishing Austria's financial position. Summary: *L. N. M. S.*, Apr. 21, 1921, p. 5.

- 7 CZECHOSLOVAK REPUBLIC—FRANCE. Agreement reached by an exchange of notes concerning social status of nationals. Text: *J. O.*, Apr. 19, 1921, p. 4851.
- 7 FRANCE—GERMANY. Document from Germany delivered to French Foreign Office asking that all of Upper Silesia be given to Germany. Same note sent to England, Italy and Japan. *N. Y. Times*, Apr. 9, 1921, p. 3.
- 7 MANDATE QUESTION. Sir Eric Drummond, Secretary-General of the League of Nations, made statement on subject of mandates in respect to powers of Parliament and position of League. Text in part: *Times*, Apr. 7, 1921, p. 10.
- 7 SILESIA. German Government presented to Allied Governments and the Inter-Allied Commission at Oppeln a note giving final figures of plebiscite vote and proposing that entire territory in which elections were held should be integrally assigned to Germany. Summary: *Times*, Apr. 9, 1921, p. 7.
- 9 CENTRAL AMERICAN UNION. Pact signed on Jan. 19, 1921, by Costa Rica, Guatemala, Honduras and Salvador, was ratified by Guatemala, thus bringing the new federation into being, Honduras and Salvador having previously ratified it. *Guatemalteco*, April 13, 1921, p. 356. Text of pact: *Cur. Hist.*, April, 1921, p. 153; *P. A. U.*, May, 1921, p. 446.
- 9 FRANCE—GERMANY. By exchange of notes of March 31 and April 9, the Foreign Ministers of both countries approved agreement relative to application of certain provisions of sections III and IV of part X of the Treaty of Versailles. *J. O.*, Apr. 21, 1921, p. 4906.
- 11 GREAT BRITAIN—UNITED STATES. British memorandum presented to United States Government proposing that the United States appoint a commissioner to confer with British Petroleum Commission for adjustment of differences in connection with San Remo oil agreement. *Times*, Apr. 12, 1921, p. 10.
- 12 CHINA—MONGOLIA. Special emissary from the living Buddha and Gen. Ungern-Sternberg reached Peking bearing draft of proposal for conclusion of peace between China and outer Mongolia on basis of terms of Kiakhta convention and recognizing that Mongolia belongs to China. *Wash. Post*, Apr. 13, 1921, p. 3.
- 12 HUNGARY. Hungarian Government informed Swiss Federal Council that it considers former Emperor Charles as Hungary's lawful sovereign and asked permission for him to reside permanently in Switzerland. *N. Y. Times*, Apr. 13, 1921, p. 1.
- 12 INTERPARLIAMENTARY UNION. Council met in Geneva under presidency of Lord Weardale with ten nations represented. *N. Y. Times*, Apr. 15, 1921, p. 2.

- 13 CANADA—UNITED STATES. House of Commons refused to adopt reciprocity agreement, signed in Washington Jan. 21, 1911, by vote of 100—79. *Wash. Post*, Apr. 14, 1921, p. 4.
- 13 FRANCE—MOROCCO. Modification of postal convention of Oct. 1, 1913, relating to Morocco having been signed at Paris on July 5, 1920, and duly ratified, the same was promulgated by the President of France. Text: *J. O.*, Apr. 16, 1921, p. 4786.
- 14 FRANCE—GERMANY. French Chamber of Deputies adopted the 50 per cent tariff bill on German imports by vote of 383—79. *Cur. Hist.*, May, 1921, 14: 207.
- 14 FRANCE—UNITED STATES. Reply of France of April 7 to United States note of April 4, relative to the status of the Island of Yap made public. Text: *N. Y. Times*, Apr. 15, 1921, p. 1; *Adv. of Peace*, May, 1921, p. 190.
- 15 SPAIN—UNITED STATES. Spain sent protest to President Harding against continued occupation of Santo Domingo by United States troops. *Cur. Hist.*, June, 1921, 14: 540.
- 18 GREAT BRITAIN—RUMANIA. Treaty of commerce and navigation, signed at Bucharest, Oct. 31, 1905, denounced by Rumania, effective Apr. 18, 1922. *Lond. Ga.*, May 10, 1921, p. 3750; *Bd. of Trade J.*, May 19, 1921, p. 560.
- 19 GREAT BRITAIN—UNITED STATES. Note sent to Great Britain denying that United States had directed Consul at San José to have Costa Rica cancel the Amory oil concession. *Cur. Hist.*, June, 1921, 14: 535.
- 19 MEXICO. Mexican delegation in London gave out a statement on the authority of President Obregon concerning Mexico's foreign policy. *Cur. Hist.*, June, 1921, 14: 533.
- 19 NETHERLANDS—UNITED STATES. Note from United States delivered at The Hague insisting that American oil corporations must have equal opportunities with the Royal Dutch Company or any other company in the development of the Djambi oil fields in Sumatra. Text: *N. Y. Times*, Apr. 30, 1921, p. 1; *Wash. Post*, April 30, 1921, p. 13; *Times*, May 2, 1921, p. 8.
- 20 ALLIED CUSTOMS COLLECTIONS. A 25 per cent German tariff became collectible at eastern frontier of the Rhineland. *Cur. Hist.*, May, 1921, 14: 207.
- 20 COLOMBIA—UNITED STATES. Treaty signed at Bogota, April 6, 1914, for settlement of differences arising out of events which took place on Isthmus of Panama in November, 1903, ratified by the United States Senate with amendments. *Cong. Rec.*, Apr. 20, 1921, p. 1-2. Text as passed: *Cur. Hist.*, June, 1921, 14: 542.
- 20 INTERNATIONAL COMMUNICATIONS AND TRANSIT CONFERENCE. Barcelona conference, which opened on Mar. 10, adjourned. Summary of

- work accomplished given by M. Hanotaux. *Temps*, Apr. 22, 1921, p. 1; *L. N. M. S.*, April, 1921, p. 2-3.
- 20 LITHUANIA—POLAND. Negotiations opened at Brussels on Vilna question. *Temps*, Apr. 21, 1921, p. 2; *L. N. M. S.*, April, 1921, p. 6.
- 21 DANZIG—POLAND. Convention signed at Paris regulating conditions of communication by rail and water, postal telegraph and telephone routes between western Europe and Germany, and eastern Prussia and the Baltic states. *Temps*, Apr. 23, 1921, p. 2.
- 23 FRANCE. Law promulgated extending for six months the law of Apr. 23, 1920, which prolonged the law of Nov. 11, 1915, concerning the sale of vessels to foreigners. *J. O.*, Apr. 24, 1921, p. 5007.
- 23 JAPAN—VLADIVOSTOK. Announcement made that Japan has decided to recognize Vladivostok as a free city and guarantee it against Bolshevik menaces. *Temps*, Apr. 25, 1921, p. 1.
- 23 NICARAGUA. Announced withdrawal of membership in League of Nations owing to expense involved. *Cur. Hist.*, June, 1921, 14: 535.
- 24 TYROL PLEBISCITE. More than 90 per cent of ballots cast in favor of union with Germany in unofficial plebiscite. *N. Y. Times*, Apr. 25, 1921, p. 15.
- 25 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. British House of Commons voted to ratify. *Temps*, Apr. 27, 1921, p. 2.
- 26 CABLE LICENSE BILL. S. 535, giving President of United States authority over cable landings on American shores passed Senate. *Cong. Rec.*, April 26, 1921, p. 611.
- 27 GERMAN WAR CRIMINALS. Arrangements completed for trial of four of the war criminals at Supreme Court of Leipzig to begin on May 23. *Times*, Apr. 28, 1921, p. 11.
- 27 GREAT BRITAIN—UNITED STATES. Supplementary extradition convention regarding desertion or nonsupport of minor or dependent children ratified by United States Senate. *Cong. Rec.*, Apr. 27, 1921, p. 663.
- 27 SIAM—UNITED STATES. Treaty concluded Dec. 16, 1920, revising treaties heretofore existing between the two countries and protocol of same date, were ratified by United States Senate. Text of treaty: *Cong. Rec.*, Apr. 27, 1921, p. 663.
- 28 CZECHOSLOVAK REPUBLIC—FRANCE. Presidential decree published putting into immediate effect the commercial convention and protocol signed Paris, Nov. 4, 1920. Texts of convention and protocol: *J. O.*, May 2, 1921, p. 5316-5322.
- 29 ITALY—UNITED STATES. Reply of Italy to United States note of April 5 expressed entire accord with policies of United States as stated in American note. Text: *N. Y. Times*, Apr. 30, 1921, p. 2. *Adv. of Peace*, May, 1921, p. 191.

- 29 NETHERLANDS. Second Chamber of Parliament voted adoption of Djambi oil field bill, thus barring bid of Standard Oil Company for a concession in the Sumatra oil region. *Wash. Post*, Apr. 30, 1921, p. 1.
- 30(?) CZECHOSLOVAK REPUBLIC—RUMANIA. Political and military agreement concluded for defense of territorial integrity and action against restoration of Hapsburgs in Hungary. *Evening Star*, May 2, 1921; *Temps*, May 3, 1921, p. 1.
- 30 KNOX PEACE RESOLUTION. United States Senate passed resolution ending state of war between United States, on the one hand, and Germany and Austria-Hungary, on the other. *Cong. Rec.*, April 30, 1921, p. 830.

May, 1921

- 1 AUSTRIA. Text of memorandum of Finance Committee of League of Nations suggesting internal reforms on basis of possible foreign credits, handed to Austrian Government. *N. Y. Times*, May 2, 1921, p. 1.
- 2 SILESIA. As a result of disorders in Upper Silesia that district was put under martial law by Inter-Allied Commission. *N. Y. Times*, May 4, 1921, p. 3.
- 3 LEAGUE OF NATIONS ASSEMBLY. Summons sent to members of League for second session of Assembly to be opened at Geneva Sept. 5, accompanied by provisional agenda. *N. Y. Times*, May 4, 1921, p. 2.
- 4 FRANCE—SWITZERLAND. The intention of France to denounce treaty stipulations giving Swiss Canton of Geneva special customs rights in adjacent French territory made public. *Nation* (N. Y.), May 4, 1921, p. 1.
- 5 SILESIA. Germany sent identical notes to Paris, London, and Rome stating that most of Upper Silesia was held by Polish bands, calling upon Allies to keep order there, and offering to aid Allies in their task. French reply of May 8 ordered Germans to keep her Reichswehr out of Silesia. *N. Y. Times*, May 10, 1921, p. 1.
- 5 UNITED STATES. Formal invitation extended by Allied Powers for representation of United States on Supreme Council, Reparations Commission and Council of Ambassadors. *Wash. Post*, May 6, 1921, p. 1. Accepted in note of May 6. Text: *Wash. Post*, May 7, 1921, p. 1. Text of both notes: *Adv. of Peace*, May, 1921, p. 187.
- 6 AUSTRIA—CZECHOSLOVAK REPUBLIC. Commercial convention signed at Prague. *Temps*, May 9, 1921, p. 1.
- 6 CZECHOSLOVAK REPUBLIC—RUMANIA. Boundary commission began sessions at Prague. *Temps*, May 7, 1921, p. 1.
- 8 AUSTRIA. Summary of Austria's reply to Financial Commission of the League of Nations regarding rehabilitation of Austria made public. *N. Y. Times*, May 9, 1921, p. 3.

- 8 GERMANY—SOVIET RUSSIA. Text of preliminary trade agreement, signed in Berlin on May 6, made public. Summary: *Times*, May 9, 1921, p. 10.
- 9 PERMANENT COURT OF INTERNATIONAL JUSTICE. Adherence of Belgium to the Court brought number of signatories to 33. *Times*, May 16, 1921, p. 7.
- 10 ALAND ISLANDS. Aland Islands Commission submitted report to League of Nations, recommending that islands remain under Finnish sovereignty with guarantees for safeguarding of Swedish population. *Wash. Post*, May 11, 1921, p. 1; *Cur. Hist.*, June, 1921, 14: 543.
- 10 COLOMBIA—VENEZUELA. Swiss Federal Council agreed to arbitrate the long-standing boundary dispute. *Wash. Post*, May 11, 1921, p. 6.
- 10 NETHERLANDS—UNITED STATES. Dutch Government's reply to American note concerning Djambi oil fields in Sumatra sent to Washington. *N. Y. Times*, May 12, 1921, p. 4. Summary received by State Department on May 12. *N. Y. Times*, May 13, 1921, p. 16.
- 11 ARGENTINA—UNITED STATES. Agreement reached at Buenos Aires for solution of difficulties causing boycott of Munson Line *Martha Washington* on March 29. *N. Y. Times*, May 12, 1921, p. 8.
- 11 AUSTRIA—FRANCE. Law promulgated approving ratification of convention signed Paris, Aug. 3, 1920, relative to regulations for application of section III of part X (economic clauses) of the Treaty of Saint-Germain, Sept. 10, 1919. *J. O.*, May 12, 1921, p. 5658.
- 11 AUSTRIA—MEXICO. Officially announced that Austria extended formal recognition to Mexican Government. *N. Y. Times*, May 12, 1921, p. 12.
- 12 AUSTRIA. Amended act passed by National Assembly providing for a plebiscite on union with Germany. *Wash. Post*, May 14, 1921, p. 1; *N. Y. Times*, May 15, 1921, II, 1.
- 12-13 AVIATION CONFERENCE. Held in London, with representatives from England, Belgium and France in attendance. *Temps*, May 12, 1921, p. 6.
- 12 GREAT BRITAIN—SOVIET RUSSIA. Lord Justice Banks of British Court of Appeals rendered decision that the British Government, through its trade agreement of March 16, had recognized the Soviet Government as the *de facto* government of Russia. *Times*, May 13, 1921, p. 9; *N. Y. Times*, May 13, 1921, p. 4.
- 13 SOVIET RUSSIA—TURKEY. Turkish Nationalist Government at Angora ratified treaty of Mar. 16, 1921, with Soviet Russia. *Wash. Post*, May 15, 1921, p. 1.

- 15 CENTRAL AMERICAN UNION—Costa Rican Congress ratified agreement. *Wash. Post*, May 16, 1921, p. 6.
- 19 IMMIGRATION RESTRICTION BILL. H. R. 4075 approved by President Harding. *Public*. No. 5, 67th Congress.
- 27 EMERGENCY TARIFF BILL. H. R. 2435 approved by President Harding. *Public*. No. 10, 67th Congress.

INTERNATIONAL CONVENTIONS

AERIAL NAVIGATION. Paris, Oct. 13, 1919.

Promulgation:

France, Jan. 29, 1921. *J. O.*, Jan. 30, 1921, p. 1411.

ARMS AND AMMUNITIONS TRADE. Paris, Saint Germain-en-Laye, Sept. 10, 1919.

Promulgation:

France, Apr. 15, 1921. *J. O.*, Apr. 20, 1921, p. 4874.

CONGO (General Act of Berlin). Berlin, Feb. 26, 1885. Revision, Saint Germain-en-Laye, Sept. 10, 1919.

Promulgation:

France. Apr. 15, 1921. *J. O.*, Apr. 20, 1921, p. 4874.

COPYRIGHT UNION. Protocol, Berne, Mar. 20, 1914.

Promulgation:

Belgium, Mar. 5, 1921. *Monit.*, Mar. 27, 1921, p. 2562.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908. Protocol, Mar. 20, 1914.

Adhesion:

Austria, Oct. 1, 1920. *Deutsch. Reichs.*, Mar. 17, 1921, No. 64; *Reichs. G.*, Mar. 17, 1921, No. 28, p. 225.

Czechoslovak Republic. Feb. 1, 1921. *Ga. de Madrid*, Mar. 24, 1921, p. 918; *Monit.*, Mar. 31, 1921, p. 2642.

INTERNATIONAL EXCHANGE OF DOCUMENTS AND PUBLICATIONS. Brussels, Mar. 15, 1886.

Adhesion:

Czechoslovak Republic (no date). *Monit.*, Mar. 20, 1921, p. 2327; *E. G.*, Mar. 23, 1921, No. 14, p. 203.

Poland. Nov. 19, 1920. *Monit.*, Mar. 28, 29, 30, 1921, p. 2549; *E. G.*, Apr. 13, 1921, No. 18, p. 244.

INTERNATIONAL OPIUM CONFERENCE, 3D. Final protocol. The Hague, June 25, 1914.

Signed:

Spain. Feb. 11, 1921. *Ga. de Madrid*, Feb. 20, 1921, p. 562.

LIQUOR TRAFFIC IN AFRICA. Saint Germain-en-Laye, Sept. 10, 1919.

Promulgation:

France. Apr. 15, 1921. *J. O.*, Apr. 20, 1921, p. 4874.

MERCHANDISE TRANSPORT BY RAILWAY. Berne, Oct. 14, 1890.

Ratification:

Poland. Feb. 21, 1921. *E. G.*, Mar. 2, 1921, No. 11, p. 176.

MOTOR VEHICLES, INTERNATIONAL CIRCULATION OF. Paris, Oct. 11, 1909.

Adhesion:

Finland, Dec. 7, 1920; *Monit.*, Feb. 14, 15, 1921, p. 1165.

Poland, Feb. 3, 1921. *Monit.*, Feb. 27, 1921, p. 1669.

POSTAL CONVENTION. Madrid, Nov. 13, 1920.

Ratification:

Colombia. To take effect May 15, 1921. *P. A. U.*, May, 1921, p. 525.

PROHIBITION OF NIGHT WORK FOR WOMEN. Berne, Sept. 26, 1906.

Adhesion:

Poland, Jan. 14, 1921; *Monit.*, Feb. 27, 1921, p. 1669; *Ga. de Madrid*, Feb. 22, 1921, p. 576.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, Mar. 20, 1883. Revision, Brussels, Dec. 14, 1900. Washington, June 2, 1911.

Adhesion:

Serb-Croat-Slovene State. Jan. 4, 1921. *Ga. de Madrid*, Mar. 4, 1921, p. 753; *Monit.*, Mar. 5, 1921, p. 1817.

PROTECTION OF INDUSTRIAL PROPERTY [affected by the World War]. Berne, June 30, 1920.

Adhesion:

Denmark, Jan. 22, 1921 (with reservation). *Ga. de Madrid*, March 25, 1921, p. 926.

Hungary, March 26, 1921. *Deutsch. Reichs.*, May 4, 1921, No. 103.

New Zealand, Jan. 25, 1921. *Ga. de Madrid*, Mar. 25, 1921, p. 926.

Serb-Croat-Slovene State. Jan. 4, 1921. *Deutsch. Reichs.*, Feb. 19, 1921, No. 42; *Ga. de Madrid*, Mar. 25, 1921, p. 926.

Promulgation:

Belgium. Mar. 12, 1921. *Monit.*, Apr. 6, 1921, p. 2812; *Ga. de Madrid*, Apr. 12, 1921, p. 174.

Ratification:

Netherlands. Mar. 24, 1921. *Ga. de Madrid*, Apr. 12, 1921, p. 174; *Monit.*, Apr. 22, 1921, p. 3352.

PUBLIC HEALTH OFFICE. Rome, Dec. 9, 1907.

Adhesion:

Morocco (Spanish protectorate). Mar. 9, 1921. *Monit.*, Mar. 31, 1921, p. 2642; *E. G.*, Mar. 23, 1921, No. 14, p. 204.

Rumania. Jan. 5, 1921. *J. O.*, Apr. 27, 1921, p. 5082; *E. G.*, Mar. 23, 1921, No. 14, p. 204.

REPRESSION OF OBSCENE PUBLICATIONS. Paris, May 4, 1910.

Adhesion:

Poland. Mar. 15, 1921. *Ga. de Madrid*, Mar. 25, 1921, p. 926; *E. G.*, Mar. 30, 1921, p. 207; *Monit.*, Apr. 15, 1921, p. 3129.

SANITARY CONVENTION. Paris, Jan. 17, 1912.

Adhesion:

Monaco (Principality). Jan. 7, 1921. *Ga. de Madrid*, Jan. 8, 1921, p. 99.

Promulgation:

Netherlands. Feb. 5, 1921. Text: *Staatsblad* (Netherlands) No. 52, 1921.

Ratification:

Germany. (No date.) *J. O.*, May 11, 1921, p. 5626.

Honduras. Dec. 20, 1920.

Serb-Croat-Slovene State. Dec. 20, 1920. *Monit.*, March 19, 1921, p. 2305.

SLAVE TRADE, ETC. Brussels, July 2, 1890. Revision, Saint Germain-en-Laye, Sept. 10, 1919.

Promulgation:

France. Apr. 15, 1921. *J. O.*, Apr. 20, 1921, p. 4874.

TECHNICAL STANDARDIZATION OF RAILWAYS. Protocol, Berne, May 18, 1907.

Adhesion:

Poland. *E. G.*, April 13, 1921, No. 18, p. 232.

TELEGRAPH. St. Petersburg, July 22, 1875. Supplement, Lisbon, July 11, 1908.

Adhesion:

Venezuela. Mar. 1, 1921. *Ga. de Madrid*, Mar. 5, 1921, p. 762; *Monit.*, Mar. 21/22, 1921, p. 2379.

TRADE-MARKS REGISTRATION. Madrid, Apr. 14, 1891. Supplement, Brussels, Dec. 14, 1900. Revision, Washington, June 2, 1911.

Adhesion:

Serb-Croat-Slovene State. Jan. 4, 1921. *Ga. de Madrid*, Mar. 4, 1921, p. 753; *Monit.*, Mar. 5, 1921, p. 1817.

UNIVERSAL POSTAL CONVENTION. Madrid, Nov. 30, 1920.

Ratification:

France, Mar. 30, 1921. *J. O.*, Mar. 31, 1921, p. 3862.

WHITE PHOSPHORUS IN MATCHES. Berne, Sept. 26, 1906.

Adhesion:

Austria. March 23, 1921. *J. O.*, May 11, 1921, p. 5626; *E. G.*, April 13, 1921, No. 18, p. 244.

Poland. July 31, 1919. *J. O.*, March 5, 1921, p. 2886.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Poland (no date). *Monit.*, Mar. 7/8, 1921, p. 1885.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Air Conference, 1920, proceedings of the, with appendices. (Cmd. 1157.) 2s. 10d.

China. Correspondence respecting the new financial consortium in. (Misc. 1921, No. 9.) 11d.

Copyright, international. Orders in Council, Dec. 21, 1920, amending the Order in Council of June 24, 1912, regulating copyright relations with the foreign countries of Berlin Copyright Union as regards Austria and Greece. (S. R. & O. 1920, Nos. 2442 and 2443.) 1½d each.

Egypt. Report of special mission to. (Egypt, No. 1, 1921.) 7½d.

Franco-British convention on certain points connected with the mandates for Syria and the Lebanon, Palestine, and Mesopotamia. (Misc. 1921, No. 4.) 1½d.

Germany. General report on industrial and economic situation in, December, 1920. (Cmd. 1114.) 10½d.

International copyright convention, signed at Berlin, Nov. 13, 1908. Accession of Greece. (Treaty series 1921, No. 3.) 1½d.

International Labor Conference. Draft conventions and recommendations adopted by the conference during its second meeting, June 15-July 10, 1920. (Authentic texts in English and French.) (Cmd. 1174.) 4½d.

International Labor (Seamen's) Conference, 1920. Draft conventions and recommendations. 4d.

International Sanitary Convention, signed at Paris, Jan. 17, 1912. (Treaty series 1921, No. 2.) 1s. 2½d.

League of Nations. Report by Secretary-General to First Assembly of the League on the work of the Council. (Cmd. 1022.) 4½d.

Mandates. Draft for Mesopotamia and Palestine as submitted for approval of League of Nations. (Misc. 1921, No. 3.) 3d.

———. Mandate for German possessions in Pacific Ocean, south of equator, other than Samoa and Nauru. (Misc. 1921, No. 5.) 1½d.

———. Mandate for Nauru. (Misc. 1921, No. 6.) 1½d.

———. Mandate for German Samoa. (Misc. 1921, No. 7.) 1½d.

———. Mandate for German Southwest Africa. (Misc. 1921, No. 8.) 1½d.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W.C.2.

Merchant shipping. Return of shipping casualties and loss of life, July 1, 1914-Dec. 31, 1918. (Cmd. 1089.) 11d.

Montenegro, report on political conditions in. (Misc. 1921, No. 1.) 1½d.

———. Further report on. (Misc. 1921, No. 2.) 3d.

Patents, designs and trade marks international arrangements. Order in Council applying provisions of Sec. 91 of the Patents and Designs Act, 1907, as amended, to the Serb-Croat-Slovene State. Feb. 14, 1921 (S. R. & O. 1921, No. 267.) 1½d.

Patents of German and Austrian nationals vested in Custodian. Orders of the Board of Trade further defining the expression "Restored Application" as used in orders of July 19 and Nov. 9, 1920. (S. R. & O. 1921, Nos. 331 and 332.) 1½d. each.

Peace handbooks prepared under direction of Historical Section of Foreign Office:

Vol. XII. China, Japan, Siam. (Cloth.) 15s. 7d.

Vol. XIV. Dutch and British Possessions. (Cloth.) 13s.

Vol. XXV. Indemnities, Plebiscites, etc. (Cloth.) 10s. 11d.

Peace treaty with Austria amendment order. Feb. 14, 1921. (S. R. & O. 1921, No. 269.) 1½d.

Peace treaty with Bulgaria amendment order. Feb. 14, 1921. (S. R. & O. 1921, No. 270.) 1½d.

Peace treaty with Bulgaria. The Egypt order. Feb. 14, 1921. (S. R. & O. 1921, No. 271.) 1½d.

Peace treaty with Germany. Agreement between British and German Governments respecting Art. 297 of Treaty of Versailles, June 28, 1919 (Property, rights, and interests). London, Dec. 31, 1920. (Treaty series No. 1, 1921.) 2½d.

———. Amendment order. Feb. 14, 1921. (S. R. & O. 1921, No. 268.) 1½d.

———. Amendment order No. 2, Nov. 9, 1920. (S. R. & O. 1920.) 1½d.

Russia. Trade agreement between His Britannic Majesty's Government and the Government of the Russian Socialist Federal Soviet Republic. (Cmd. 1207.) 2d.

UNITED STATES²

Alien Property Custodian. Act to facilitate return of money or other property of American women married to enemy citizens. Approved Feb. 27, 1921. 1 p. (Public 332.) 5c.

———. Report to accompany bill (S. 4897). Feb. 15, 1921. 3 p. (H. rp. 1329.) *Interstate and Foreign Commerce Committee.*

² Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Articles of War, approved June 4, 1920. 44 p. *War Dept.*

Belgium. Message transmitting agreement signed by British and French Premiers and President of United States recommending acceptance of special German reparation bonds corresponding to sums borrowed by Belgium from their respective governments in satisfaction of Belgian obligations on account of such loans. Feb. 14, 1921. 2 p. (S. doc. 413.) *State Dept.*

Boundaries. S. J. Res. 233 giving consent of Congress to North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, and Nebraska, or any two or more of said States, to agree upon jurisdiction to be exercised by said States over boundary waters between any two or more of said States. Approved March 4, 1921. 1 p. (Pub. Res. 68.) 5c.

Cable-landing licenses. Hearings on S. 4301 to prevent unauthorized landing of submarine cables in United States. 1921. 513 p. il. map. *Interstate Commerce Committee.*

Cabrera, Manuel E. Report concerning signing and observance of articles of capitulation under terms of which President Cabrera surrendered executive office of Guatemala. Jan. 19, 1921. 6 p. (S. doc. 357.) *State Dept.*

China, famine relief in. Hearing, 1921. 12 p. *Appropriations Committee.*

———. Incorporation of companies to promote trade in. Report to accompany H. R. 16043. Feb. 9, 1921. 8 p. (H. rp. 1312.) *Judiciary Committee.*

Claims of American citizens against Germany. Report in respect to, filed with Department of State since August, 1914. March 2, 1921. 32 p. (S. doc. 419.) *State Dept.*

Colombia. Diplomatic correspondence and documents submitted to Committee on Foreign Relations to accompany treaty signed at Bogota, Apr. 6, 1914, between United States and Colombia for settlement of differences arising out of events which took place on Isthmus of Panama in November, 1903. (Confidential S. Ex. doc. 1, 65th Cong. spl. sess.) *Senate.*

Colored troops in French army and number of French colonial troops in occupied territory of Germany. Report presented by Mr. Lodge. 1921. 16 p. (S. doc. 397.) *State Dept.*

Commercial travelers' convention between Salvador and United States, signed at Washington, Jan. 28, 1919, proclaimed Jan. 22, 1921. 7 p. (Treaty series 651.) *State Dept.*

Copyright. Proclamations extending benefits of Act of March 4, 1909, and Acts amendatory thereof, to Danish and British subjects, except Dominions, for works first published between Aug. 1, 1914, and before the President's proclamation of peace, and not already republished in

United States. Denmark, Information Circular No. 59, 3 p.; Great Britain, Information Circular No. 58, 6 p. *Copyright Office*.

Czechoslovakia, economic situation in, 1920. Report by R. J. Caldwell. 48 p. *Labor Dept.*

Disarmament. Hearings on H. J. Res. 424, authorizing the President to invite all nations to send delegates to convention to provide for. Jan. 14-15, 1921. 68 p. *Foreign Affairs Committee*.

———. Report to accompany H. J. Res. 424. Feb. 2, 1921. 1 p. (H. rp. 1283.)

———. Report to accompany S. J. Res. 225, authorizing President to advise Governments of Great Britain and Japan that Government of United States is ready to take up with them question of disarmament. Jan. 18, 1921. 1 p. (S. rp. 709.) *Foreign Relations Committee*.

———. Hearings, Jan. 11, 1921. 46 p. *Military Affairs Committee*.

France. Agreement between United States and, modifying provisions of Art. 7 of convention of commerce and navigation of June 24, 1822; signed Washington, July 17, 1919; proclaimed Jan. 12, 1921. 5 p. (Treaty series 650.) *State Dept.*

Haitian Customs Receivership. Report for fiscal year Oct. 1, 1918-Sept. 30, 1919. 37 p. *State Dept.*

Harding, President Warren G. Inaugural address, March 4, 1921. (S. doc. 1, 67th Cong. spl. sess. of Senate.) *State Dept.*

Immigration. Hearing on H. R. 14471 for emergency legislation. 1921. 713 p.; report to accompany, Feb. 14, 1921, 10 p. (S. rp. 789.) *Immigration Committee*.

———. Proposed restriction of. Hearings on H. R. 12320, Apr. 22, 1920. 138 p. *Immigration and Naturalization Committee*.

Migratory birds. Proclamation further amending regulations proclaimed July 31, 1918. March 3, 1921. 2 p. No. 1588. *State Dept.*

Naturalization and citizenship. Report to accompany H. R. 15603 to amend Naturalization and Expatriation Acts. Jan. 12, 1921. 6 p. (H. rp. 1185.) *Immigration and Naturalization Committee*.

Pan American Financial Conference. Report of Secretary of Treasury on conference at Washington, Jan. 19-24, 1920. 176 p. Paper, 15c. *Treasury Dept.*

Passports. Hearings on H. R. 15857 and 15953 further regulating granting of visés by diplomatic and consular officers. Jan. 22-31, 1921. 52 p.; report submitted Feb. 1, 1921, with minority views, 10 p. (H. rp. 1280.) *Foreign Affairs Committee*.

Peru. Report covering invitation of Government of Peru to Government of United States to take official part in celebration of first centennial of independence of Peru at Lima in July, 1921. Feb. 2, 1921. 3 p. (S. doc. 370.) *State Dept.*

Relief of suffering populations of the world, stricken by war, famine,

and pestilence. Hearings on H. Con. Res. 70 and 71, Jan. 10-11, 1921. 39 p. *Foreign Affairs Committee*.

———. Report submitted Jan. 13, 1921. 1 p. (H. rp. 1186.) *For. Aff. Comm.*

Relief work of European Relief Council. Report to accompany S. Con. Res. 35, submitted Jan. 18, 1921. (S. rp. 708.) *Foreign Relations Committee*.

Russia. Hearings on H. Res. 635 requesting Secretary of State to furnish information as to conditions in. Jan. 27-Mar. 1, 1921. 254 p. *Foreign Affairs Committee*.

———. Hearings on S. J. Res. 164 for reestablishment of trade relations with. 1921. 112 p. *Foreign Relations Committee*.

Ships. Digest of consular regulations relating to vessels and seamen. Dec. 1, 1920. 72 p. *State Dept.*

World War. Joint resolution declaring that certain acts of Congress, joint resolutions, and proclamations shall be construed as if the war had ended. Approved March 3, 1921. 2 p. (Pub. Res. 64.) 5c.

———. Report of Secretary of State relating to complaints of American citizens as to interference with American commerce by British authorities during the war. March 2, 1921. 1 p. (S. doc. 423.) *State Dept.*

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

STRATHEARN STEAMSHIP COMPANY, LIMITED, *v.* DILLON ¹

Supreme Court of the United States

March 29, 1920

Mr. Justice Day delivered the opinion of the court.

This case presents questions arising under the Seamen's Act of March 4, 1915, c. 153, 38 Stat. 1164. It appears that Dillon, the respondent, was a British subject, and shipped at Liverpool on the eighth of May, 1916, on a British vessel. The shipping articles provided for a voyage of not exceeding three years, commencing at Liverpool and ending at such port in the United Kingdom as might be required by the master, the voyage including ports of the United States. The wages which were fixed by the articles were made payable at the end of the voyage. At the time of the demand for one-half wages, and at the time of the beginning of the action, the period of the voyage had not been reached. The articles provided that no cash should be advanced abroad or liberty granted other than at the pleasure of the master. This, it is admitted, was a valid contract for the payment of wages under the laws of Great Britain. The ship arrived at the Port of Pensacola, Florida, on July 31, 1916, and while she was in that port, Dillon, still in the employ of the ship, demanded from her master one-half part of the wages theretofore earned, and payment was refused. Dillon had received nothing for about two months, and after the refusal of the master to comply with his demand for one-half wages, he filed in the District Court of the United States a libel against the ship, claiming \$125.00, the amount of wages earned at the time of demand and refusal.

The District Court found against Dillon upon the ground that his demand was premature. The Circuit Court of Appeals reversed this decision, and held that Dillon was entitled to recover. 256 Fed. Rep. 631. A writ of certiorari brings before us for review the decree of the Circuit Court of Appeals.

In *Sandberg v. McDonald*,² 248 U. S. 185, and *Neilson v. Rhine Shipping Co.*, 248 U. S. 205, we had occasion to deal with Sec. 11 of the Sea-

¹ 252 U. S.

² This JOURNAL, Vol. 13, p. 339.

men's Act, and held that it did not invalidate advancement of seamen's wages in foreign countries when legal where made. The instant case requires us to consider now Sec. 4 of the same act. That section amends Sec. 4530, Rev. Stats., and so far as pertinent provides:

Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. . . . *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.

This section has to do with the recovery of wages by seamen, and by its terms gives to every seaman on a vessel of the United States the right to demand one-half the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the end of the voyage, and stipulations in the contract to the contrary are declared to be void. A failure of the master to comply with the demand releases the seaman from his contract and entitles him to recover full payment of the wages, and the section is made applicable to seamen on foreign vessels while in harbors of the United States, and the courts of the United States are open to such seamen for enforcement of the act.

This section is an amendment of Sec. 4530 of the Revised Statutes, it was intended to supplant that section, as amended by the Act of December 21, 1898, c. 28, 30 Stat. 756, which provided, "Every seaman on a vessel of the United States shall be entitled to receive from the master of the vessel to which he belongs one-half part of the wages which shall be due him at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended unless the contrary be expressly stipulated in the contract," etc.

The section, of which the statute now under consideration is an amendment, expressly excepted from the right to recover one-half of the wages those cases in which the contract otherwise provided. In the amended section all such contract provisions are expressly rendered void, and the right to recover is given the seamen notwithstanding contractual obligations to the contrary. The language applies to all seamen on vessels of the United States, and the second proviso of the section as it now reads makes it applicable to seamen on foreign vessels while in harbors of the United States. The proviso does not stop there, for it contains the express provision that the courts of the United States shall be open to seamen on foreign

vessels for its enforcement. The latter provision is of the utmost importance in determining the proper construction of this section of the Act. It manifests the purpose of Congress to give the benefit of the Act to seamen on foreign vessels, and to open the doors of the federal courts to foreign seamen. No such provision was necessary as to American seamen for they had the right independently of this statute to seek redress in the courts of the United States, and, if it were the intention of Congress to limit the provision of the Act to American seamen, this feature would have been wholly superfluous.

It is said that it is the purpose to limit the benefit of the Act to American seamen, notwithstanding this provision giving access to seamen on foreign vessels to the courts of the United States, because of the title of the Act in which its purpose is expressed "to promote the welfare of American seamen in the merchant marine of the United States." But the title is more than this, and not only declares the purposes to promote the welfare of American seamen but further to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea. But the title of an Act cannot limit the plain meaning of its text, although it may be looked to to aid in construction in cases of doubt. *Cornell v. Coyne*, 192 U. S. 418, 530, and cases cited. Apart from the text, which we think plain, it is by no means clear that if the Act were given a construction to limit its application to American seamen only, the purposes of Congress would be subverted, for such limited construction would have a tendency to prevent the employment of American seamen, and to promote the engagement of those who were not entitled to sue for one-half wages under the provisions of the law. But, taking the provisions of the Act as the same are written, we think it plain that it manifests the purpose of Congress to place American and foreign seamen on an equality of right in so far as the privileges of this section are concerned, with equal opportunity to resort to the courts of the United States for the enforcement of the Act. Before the amendment, as we have already pointed out, the right to recover one-half the wages could not be enforced in face of a contractual obligation to the contrary. Congress, for reasons which it deemed sufficient, amended the Act so as to permit the recovery upon the conditions named in the statute. In the case of *Sandberg v. McDonald*, 248 U. S. *supra*, we found no purpose manifested by Congress in Sec. 11 to interfere with wages advanced in foreign ports under contracts legal where made. That section dealt with advancements, and contained no provision such as we find in Sec. 4. Under Sec. 4 all contracts are avoided which run counter to the purposes of the statute. Whether consideration for contractual rights under engagements legally made in foreign countries would suggest a different course is not our province to inquire. It is sufficient to say that Congress has otherwise declared by the positive

terms of this enactment, and if it had authority to do so, the law is enforceable in the courts.

We come then to consider the contention that this construction renders the statute unconstitutional as being destructive of contract rights. But we think this contention must be decided adversely to the petitioner upon the authority of previous cases in this court. The matter was fully considered in *Patterson v. Bark Eudora*, 190 U. S. 169, in which the previous decisions of this court were reviewed, and the conclusion reached that the jurisdiction of this Government over foreign merchant vessels in our ports was such as to give authority to Congress to make provisions of the character now under consideration; that it was for this Government to determine upon what terms and conditions vessels of other countries might be permitted to enter our harbors, and to impose conditions upon the shipment of sailors in our own ports, and make them applicable to foreign as well as domestic vessels. Upon the authority of that case, and others cited in the opinion therein, we have no doubt as to the authority of Congress to pass a statute of this sort, applicable to foreign vessels in our ports and controlling the employment and payment of seamen as a condition of the right of such foreign vessels to enter and use the ports of the United States.

But, it is insisted, that Dillon's action was premature as he made a demand upon the master within less than five days after the vessel arrived in an American port. This contention was sustained in the District Court, but it was ruled otherwise in the Court of Appeals. Turning to the language of the Act, it enacts in substance that the demand shall not be made before the expiration of five days, nor oftener than once in five days. Subject to such limitation, such demand may be made in the port where the vessels stops to load or deliver cargo. It is true that the Act is made to apply to seamen on foreign vessels while in United States ports, but this is far from requiring that the wages shall be earned in such ports, or that the vessels shall be in such ports five days before demand for one-half the wages earned is made. It is the wages of the voyage for which provision is made, with the limitation of the right to demand one-half of the amount earned not oftener than once in five days. The section permits no demand until five days after the voyage has begun, and then provides that it may be made at every port where the vessel stops to load or deliver cargo, subject to the five-day limitation. If the vessel must be five days in port before demand can be made, it would defeat the purpose of the law as to vessels not remaining that long in port, and would run counter to the manifest purpose of Congress to prevent a seaman from being without means while in a port of the United States.

We agree with the Circuit Court of Appeals of the Fifth Circuit, whose judgment we are now reviewing, that the demand was not premature. It is true that the Circuit Court of Appeals for the Second Circuit held in

the case of *The Italier*, 257 Fed. Rep. 712, that demand, made before the vessel had been in port for five days, was premature; this was upon the theory that the law was not in force until the vessel had arrived in a port of the United States. But, the limitation upon demand has no reference to the length of stay in the domestic port. The right to recover wages is controlled by the provisions of the statute and includes wages earned from the beginning of the voyage. It is the right to demand and recover such wages with the limitation of the intervals of demand as laid down in the statute, which is given to the seaman while the ship is in a harbor of the United States.

We find no error in the decree of the Circuit Court of Appeals and the same is *Affirmed*.

THE ELVE AND THE BERNISSE¹

Judicial Committee of the Privy Council

December 16, 1920

Sir Arthur Channell, in delivering their Lordships' judgment, said: This is an appeal by the Procurator-General from a decree of Lord Sterndale, dated July 25, 1919, in a consolidated action brought by the respondents, the owners of the S.S. *Elve* and *Bernisse*, whereby the learned President decreed on the claim in respect of the S.S. *Elve* restitution in value and gave damages in respect of the S.S. *Bernisse*, which had already been released but in a damaged condition. The steamships were owned by P. A. Van Es & Co., a Dutch firm at Rotterdam, and were chartered to a Dutch company in business at Delft for the carriage of cargoes of ground-nuts from the port of Rufisque, in the French Colony of Senegal, to Rotterdam. The Dutch companies had factories at various places in Holland, where the ground-nuts were dealt with and oil was extracted from them. This importation had commenced before the war. It was for a time stopped on the outbreak of war, but the object of it having been explained to and looked into by the French Government, it was permitted to proceed under agreed conditions and guarantees. Each consignment of ground-nuts was to be accompanied by a document called an "acquit à caution," issued by the French colonial authorities at the port of loading, and this was to be deposited on arrival in Holland with a representative of the French customs authorities at the port of discharge whose duty it was to take precautions to secure that the ground-nuts were used at the factories and that the products did not go to an enemy destination.

On May 20, 1917, the two steamships, sailing in company with cargoes of ground-nuts in bulk, were proceeding on the voyage from Rufisque to

¹ 37 Times L. R. 193.

Rotterdam by the route, then considered the safest, round the north of Scotland, and on that day they were stopped by H.M.S. *Patia*, an auxiliary cruiser, at a point situate in latitude 62 deg. 4 mins. N., and longitude 15 deg. 10 mins. W. This spot is in the North Atlantic, approximately west of the Orkneys, and is outside the zone within which the Germans had announced their intention of sinking all neutral vessels. At the time when the vessels were so stopped the Order in Council of February 16, 1917, was in force, and was being acted on by H.M. cruisers, and as it is necessary on this appeal to consider the words of that order, it is well to set out the operative part.

1. A vessel which is encountered at sea on her way to or from a port in any neutral country affording means of access to the enemy territory without calling at a port in British or Allied territory shall, until the contrary is established, be deemed to be carrying goods with an enemy destination, or of enemy origin, and shall be brought in for examination, and, if necessary, for adjudication before the Prize Court.

2. Any vessel carrying goods with an enemy destination, or of enemy origin, shall be liable to capture and condemnation in respect of the carriage of such goods; provided that, in the case of any vessel which calls at an appointed British or Allied port for the examination of her cargo, no sentence of condemnation shall be pronounced in respect only of the carriage of goods of enemy origin or destination, and no such presumption as is laid down in Article 1 shall arise.

3. Goods which are found on the examination of any vessel to be goods of enemy origin or of enemy destination shall be liable to condemnation.

4. Nothing in this order shall be deemed to affect the liability of any vessel or goods to capture or condemnation independently of this order.

It had become the practice to give to any vessel which started from a British port on a voyage to a port affording access to enemy territory or which when on such a voyage wherever commenced had, in order to comply with the Order in Council, called at a British port for the examination of her cargo, a clearance on a green card, which became known as a green clearance. When the two steamers were stopped, they were boarded by an officer from H.M.S. *Patia*, who made the usual inquiries, and was told the port from which the vessels had come, and that to which they were bound, and was shown her French documents, including the "acquit à caution." The officer asked if they had a green clearance, and was of course told that they had not. He ascertained that the cargo was in bulk, and in his evidence at the trial he gave a decided opinion that it would have been impossible to examine the ships at sea in order to find out whether there was anything hidden under the cargo. He stated, however, that if there had been a green clearance, or in other words, if the cargoes had been examined at a British port, he would have been satisfied. Being in doubt what to do, he reported the facts by signal to the captain of the *Patia*, and the captain, being also puzzled, reported them by wireless to the admiral in command of the cruiser squadron, who directed that the vessels should be sent into Kirkwall. They were accordingly ordered to

go there, and an officer and three men were put on each steamer to see that they went. The captains remonstrated on the ground that they would have to go through the danger zone, but they were told that it did not make much difference, as there were German submarines about outside the zone as well as within it, and that they sank vessels wherever they met them, so that ships were nearly as likely to be torpedoed outside the zone as in it. On this point the learned President, although he did not think it material, found that there was greater danger on the route by which the ships were directed to go than on that which they had intended to take, and their Lordships would not be inclined, and indeed have not been asked, to differ from the learned President on this point. The vessels did when within the zone encounter a German submarine, which fired on them without previous warning and sank the *Elve* by one torpedo and seriously damaged the *Bernisse* by another. Fortunately a British cruiser appeared, which took on board the crews of the vessels, who had taken to their boats, and towed the *Bernisse* in her damaged condition into Kirkwall. The *Bernisse* was temporarily repaired, and ultimately was allowed to proceed on her voyage to Rotterdam, and it is in evidence that her cargo was never examined, although in the course of the repairs it probably became evident that there was no contraband on board. On these facts the learned President has held that there was no ground in fact for detaining the vessels and sending them into Kirkwall, and, further, that there was no such reasonable ground for thinking that there was as to relieve the Crown from paying the damages arising from sending them in, and it is on the latter point that the appeal has been brought.

It is necessary first to consider the construction of the Order in Council. It has been held by this board that the order is binding on neutrals (*The Stigstad*, 35 *The Times* L. R., 176; [1919] A. C., 279; see also *The Leonora*, 35 *The Times* L. R., 719 [1919] A. C., 974), and the order expressly directs that vessels which come within the first clause *shall* be brought in for examination. The order is not very happily worded, but these vessels having started from an Allied port, do not come within the order at all unless the words "without calling at" imposed on a vessel the obligation of a subsequent call even although her cargo had been duly examined and passed at the British or the Allied port from which she started. This is an impossible construction. Having regard to the fact that the object of requiring a call is to ensure that there shall be an opportunity of examining the cargo, it seems clear that "calling at" must include "having been at" a British or Allied port when the port was the original port of departure on the voyage; and as regards the want of a green clearance that would only be given at a British port, and it really is quite clear that throughout the order an Allied port is put on the same footing as a British port. The President so held and their Lordships agree with him.

As there was in this case no ground whatever proved on which either ships or cargo could have been condemned as prize any more than any ground for detaining them under the Order in Council, the question remaining is merely that of reasonable ground for the action taken. To show such ground the Crown rely on two points. First they say that the detention was a legitimate exercise of the right of search. In this war it has been agreed that search at sea has been practically impossible and sending in to port for search has been almost universal. In this case further there was evidence that the search at sea for contraband hidden under the ground-nuts would have been impossible. The President, however, has disposed of this point by saying that even if the officers might have suspected that something contraband was hidden under the ground-nuts, in fact they did not do so and have never said that they did. They really only sent the vessels in because there was no green clearance. This seems a sufficient answer, and it is unnecessary to go further, but counsel for the respondents do further argue that even for a search reasonable ground of suspicion must be shown, and that where everything is in order on the papers, and there is no circumstance suggesting hidden contraband, even a search on the spot would be unjustifiable. In strictness this is of course correct, but so little suspicion is required to justify a search that their Lordships are not prepared to say that if a boarding officer were to state that finding a cargo to be in bulk he thought something might be hidden under it, and therefore directed a search, his conduct would be so unreasonable as to subject the Crown to a liability for damages. That case must be considered if it should arise. Here it does not appear to arise.

The second point on which the Crown rely is really the only one which gives rise to any difficulty. It is that there was a *bona fide* doubt on the part of the officers who gave the order for detention as to the true construction of the Order in Council. The question as to what is sufficient to relieve a captor from paying damages in respect of a capture which is afterwards decided to be in fact wrongful was very fully considered in the case of *The Oostzee* (9 Moore, P. C., 150). It was there held that to exempt captors from costs and damages there must be some circumstances connected with the ship or cargo affording reasonable ground for belief that the ship or cargo might prove a lawful prize. That case arose during the Crimean War, and the cases down to that date were very fully dealt with. The only case which at all supports the contention put forward by the Crown in the present case is *The Luna* (Edwards, 190). There a neutral vessel proceeding to San Sebastian, in Spain, which had at the time been for two years in the occupation of the French, was seized for alleged breach of blockade by British captors who were in *bona fide* doubt whether or not an Order in Council of April 26, 1809, declaring a blockade of "ports and places under the government of France" extended

to San Sebastian so temporarily in French occupation. Sir William Scott held that it did not so extend, and decreed simple restitution, and he not only refused the claimants costs and damages, but gave the captors their expenses. In giving judgment he said:

It is impossible for the court to throw out of its consideration that when these Orders in Council are issued it is the duty of the officers of His Majesty's Navy to carry them into effect, and although they may be of a nature to require a great deal of attentive consideration, gentlemen of the Navy are called upon to act with promptitude and to construe them as well as they can under the circumstances of cases suddenly arising. With every wish, therefore, to make the greatest allowance for the difficulties which are at present imposed on the commerce of the world, I cannot in this instance refuse the captors their expenses, but in no future case arising on the same state of facts will the court grant that indulgence.

In *The Actæon* (2 Dodson 48), five years later, Sir William Scott, without referring to his former decision in *The Luna* (*supra*), which does not appear to have been quoted to him, laid down what seems to be a different rule. He says at p. 52:

Neither does it make any difference whether the party inflicting the injury has acted from improper motives or otherwise. If the captor has been guilty of no wilful misconduct, but has acted from error and mistake only, the suffering party is still entitled to full compensation, provided, as I have before observed, he has not by any conduct of his own contributed to the loss. The destruction of the property by the captor may have been a meritorious act towards his own Government, but still the person to whom the property belongs must not be a sufferer.

These cases are reviewed at length in *The Oostzee* (*supra*) and it is said in the judgment that in *The Luna* (*supra*) Lord Stowell must have felt that he was going to the very verge of the law. The headnote to the report of *The Oostzee* (*supra*) in Moore's report states as part of the decision and not as a dictum that an honest mistake occasioned by an act of government will not relieve captors from liability to compensate a neutral; but it should be noted that towards the end of the judgment delivered by Lord Kingsdown he points out that in the case then before the board there was no point of law. In strictness, therefore, what was said as to the insufficiency of a mistake in point of law might be considered as *obiter*. Their Lordships, however, consider that the judgment in *The Oostzee* (*supra*) must be looked at as a whole, and that it really does decide the point stated in the headnote. It is not necessary to say that in order to relieve the captors from paying damages the neutral owner must be in some way in fault; it may be only his misfortune; but there must be something "connected with the ship or cargo" in order to give rise to the suspicion which will relieve. Here the doubt which certainly was honestly entertained was not a doubt as to anything so connected, but merely a doubt as to the meaning of an Order in Council issued by the British Government. If the decision in *The Luna* (*supra*) proceeded entirely on

the ground stated in the judgment as reported, it is contrary not only to *The Oostzee* (*supra*), but to the judgment of Lord Stowell himself in *The Actæon* (*supra*), and it cannot now be followed. It may well be that in addition to the point which is stated in the judgment in *The Luna* (*supra*) as reported, and which is, as Lord Stowell truly said, a point which ought not to be left out of consideration, there were also in the facts of that case circumstances connected with the ship which were in Lord Stowell's mind. It is clear on the face of the report that the whole judgment is not reported. Even if San Sebastian was not in strictness a blockaded port under the Order in Council, nevertheless a ship going there was obviously taking goods to the enemy, who were in actual occupation of it, and on that or some other ground, in addition to what appears in the judgment, the decision may have been justified. It has, however, been treated as a decision that the facts referred to in the judgment as matters to be taken into consideration would in themselves be sufficient, and so understood it is contrary to at least one decision binding on this board. Their Lordships will therefore humbly advise his Majesty that this appeal should be dismissed with costs.

BOOK REVIEWS *

Contemporary French Politics. By Raymond Leslie Buell. With an introduction by Carlton J. H. Hayes. New York: D. Appleton and Co. 1920. pp. xxviii, 524..

The author of this book is a studious young American, who, having served his country in arms, lingered on foreign soil long enough, and worked diligently enough, to gather a remarkable mass of information concerning the political attitudes, methods, and tendencies of the French people; and he has brought this information together in a very readable book. He deals mainly with domestic politics—party alignments, woman suffrage, proportional representation, syndicalism, the regionalist movement, the press and the censorship, and constitutional reform. Three chapters, however, are devoted to matters that may fairly be termed international. One explains what the French peace terms might have been; a second discusses the French conception of a league of nations; the third tells us what France thought of American “idealism.”

Reviewing the demands of various extremer French elements—the total dismemberment of Germany, or the annexation of the left bank of the Rhine, or the creation of a cis-Rhenish republic, or the annexation of at least the valley of the Saar (coupled with the total reduction of German armament and the establishment of a permanent alliance among the existing Allies)—the author shows that such a peace would merely have followed the lines of the old diplomacy and, although having much to justify it in morals, would probably have proved as ineffectual as settlements of the old diplomacy have commonly proved hitherto. He shows how, starting from an attitude of incredulity, French opinion gradually swung to the support of the League of Nations idea as an alternative plan of settlement, only to be grievously disappointed with the character of the League as established. Only a League vastly stronger than that which actually came into being could have compensated, in the French view, for the safeguards which the old diplomacy would have secured; and “responsibility for the failure to provide the League of Nations with the security upon which France justly insisted was largely due to the American Peace Delegation.” This suggests an analysis of the French attitude toward the United States during and after the peace negotiations; and Mr. Buell’s final chapter is devoted to a singularly clear exposition of this

* The JOURNAL assumes no responsibility for the views expressed in signed book reviews.—ED.

important matter. Copious quotations from newspapers and speeches show in startling fashion how far the reaction went—how generally it came to be believed that “although the foremost republic in the world has its virtues, it is perhaps controlled as much by self-interest and as little by altruism as any other nation in the world;” and the volume closes with the cheerless thought, not only that America, despite all her effort, managed merely to disillusion her European friends, but also that the most that one dare hope for the world at large is that each war and each peace conference henceforth may yield “some betterment” and “some progress.”

FREDERIC A. OGG.

La cuestion de Tacna y Arica. E. Castro y Oyanguren. Lima: Impr. del Estado. 1919. pp. 93.

The outcome of the World War and the announced principles upon which it was fought by the Allies have served to reinvigorate the long-standing claims of various countries based upon alleged wrongdoing of other nations. Prominent among these claims is that of Peru against Chile, arising out of the non-performance of Article 3 of the Treaty of Ancon of October 20, 1883, concluding the war of the Pacific, according to which “the provinces of Tacna and Arica . . . shall continue in the possession of Chile, subject to Chilean legislation and authority for a period of ten years. . . . At the expiration of that term, a plebiscite will decide by popular vote, whether the territory . . . is to remain definitely under the dominion and sovereignty of Chile or is to continue to constitute a part of Peru.”

The plebiscite has never been held, and the provinces are still controlled by Chile. Naturally, a controversy, resting on Peruvian assertions of bad faith on the part of Chile, has been raging ever since between the two countries, manifested in a voluminous polemic literature and a wealth of diplomatic correspondence. Peru in particular has untiringly sought to bring her case to the attention of the world, and the recovery of the “lost provinces” is the central point of her foreign policy.

The pamphlet under review is one among many presenting the Peruvian argument in the controversy. It is, in essence, an epitome of the more elaborate work of Dr. Victor M. Maurtua (published in 1901), which it supplements by adducing some recent documents. It embodies the history since 1842, when Chile, with the discovery of guano north of 27°, began her penetration northwards, and emphasizes the negotiations before, during, and subsequent to the war of 1879-1883, in order to show the intent of the negotiators with respect to Article 3 of the treaty of Ancon. It concludes with an appendix containing the circular instruction of the Peruvian Minister of Foreign Affairs of February 14, 1919, which constitutes a reply to a similar Chilean instruction of December, 1918, summar-

izing the respective contentions of the parties. The author deals with the negotiations subsequent to 1894, when the plebiscite should have been held, to show the efforts of Chile to prevent its execution. He also points out Chile's uniform resistance to arbitration of the dispute, including her opposition to the principle of arbitration enunciated in a resolution at the Pan-American Congress of 1889, on which Chile abstained from voting.

The author might have mentioned Chile's arguments in support of her position, namely, that the plebiscite was a mere formality, intended to "save the faces" of the Peruvian negotiators with their own people; that an unconditional cession was intended; that Chilean "capital and workers" had made the territory productive; that the territory was ceded as "reparation" for the war losses of Chile; and that it was needed for the military security of Chile.

Impartial study and the effort to make the strongest Chilean case possible but emphasize its essential weakness and lack of substance. The above contentions of Chile are not, it is believed, sustainable from the record; and it can hardly be doubted that Chile has had little or no desire to have the plebiscite held. The reason is clear: being already in control of the territory, and having the physical force to maintain such control, she had no interest in jeopardizing her position. Recent events in Europe would indicate that reliance upon force is still the major sanction of international relations and the keynote of the foreign policy of many nations. Nevertheless, Chile has exposed herself to the continued propaganda of what is essentially a valid claim of Peru, and the dispute, unless settled, threatens the peace of the American continent and the moral standing of Chile. The pamphlet under review manifests much patriotic fervor, apparently inseparable from the polemics to which the dispute has on both sides given rise.

EDWIN M. BORCHARD.

De internationaalrechtelijke betrekkingen tusschen Nederland en Venezuela, 1816-1920. By K. H. Corporaal, LL.D., Pol.Sc.D. Leiden: Eduard Ydo. 1920. pp. 672.

President Cleveland in one of the Princeton lectures he delivered after retiring from public life has demonstrated to what extent the relations between Venezuela and European states may affect America's attitude towards both. A book therefore dealing with Venezuela's relations with another country must be of interest to Americans; especially when—as in the present instance—that other country has colonial possessions in the Caribbean.

This is a book of applied political science, in which the author considers problems diplomatic, political, legal and economic as they actually arose between two countries of our day. By far the greater part is a lucid and

exhaustive narrative, the work of a gardener in the green bushes of diplomatic history; whilst a final chapter, which savors more of laboratory dissection, gives a theoretical analysis of the legal problems with which statesmen of the Netherlands and Venezuela found themselves confronted in the course of the latter's existence as an independent international entity. Official and other documents complete the text.

The relations between the Netherlands and Venezuela are determined by the existence of a Dutch colony, the Island of Curaçao, close to the Venezuelan coast. Curaçao, with its excellent harbor, has no resources of its own, and, in an economic sense, is entirely dependent on traffic with neighboring countries. Of these, Venezuela, owing to its proximity, is the most important. The existence in that country of a high customs tariff gave rise to lively smuggling, and Curaçao naturally became the center of activity of this illicit traffic. In spite of constant and energetic endeavors on the part of the Netherland authorities, this could not be totally suppressed, and Venezuela, thus deprived of part of the income derived from her customs, had not unnaturally several times some feeling against the neighboring island.

Venezuela, on which Curaçao is economically dependent, is at the same time to a certain extent politically dependent on Curaçao. Frequent changes of a more or less revolutionary character in the government of the Republic made the Netherland colony the refuge of those who for political reasons are not tolerated in their home country. It is obvious that such a situation is likely to affect the relations between the two states. As the author remarks, this dependence, coupled with the fact that the Netherlands are here confronted with a state in which revolutions have by no means been infrequent, and where, about a century after the separation from the mother-country, lasting tranquillity did not yet appear to be quite firmly established, leaves its mark on the relations of the two countries.

Consequently the Netherland authorities have been faced with a number of problems whose solution has called into existence a peculiar system of international law between the two states. The existence of this peculiar system may be inferred from the attitude adopted by the Netherlands towards Venezuelan Governments following revolutionary movements in that country. The geopolitical situation of Curaçao and the interests of the island, forced Holland to proclaim her neutrality at an earlier moment than would be in accordance with the strict rule of international law, and to postpone the recognition of such Governments to a later date than would be legally necessary.

The revolutionary character of the Venezuelan state, which in the beginning of this century seemed not yet entirely mature and therefore not over-anxious to put an end to unstable conditions, did not encourage the Netherlands to conclude treaties. Recently, however, a treaty of amity

and commerce was made. The peculiar character of the Republic made it necessary for Holland to determine her attitude towards those typically South American conceptions known as the Drago and Calvo Doctrines, which find in Venezuela a champion, owing to the occasionally disturbed internal conditions.

The lack of treaties made it possible for Venezuela to resort to numerous and far-reaching instances of retorsion directed against the commerce of Curaçao, to which in 1908 the Netherlands retaliated.

The peculiar international relations with Venezuela led further to collective diplomatic proceedings on the part of the Powers, including the Netherlands, and to naval measures on the Dutch side, of a nature as is not usual towards other states. In case measures of a coercive nature were taken against Venezuela, the application of the Monroe Doctrine complicated the situation, and had to be taken into consideration.

On the other hand, to balance these proceedings against Venezuela, mention must be made of Netherland measures taken exclusively in the interests of the Republic: *i.e.*, the expulsion of aliens from Curaçao at the request of the government of the other country, and the suppression, on a wider scale than would be strictly necessary, of the traffic in war materials.

E. N. VAN KLEFFENS.

Vom Eingreifen Amerikas bis zum Zusammenbruch. By Karl Helfferich.
Berlin: Ullstein & Co., 1919. pp. 658.

This is the third and last volume of the author's work entitled *Der Weltkrieg*, and covers the period after the decision to wage unrestricted submarine war. In view of the author's position as Minister of the Exchequer during the war, and his almost constant employment in political negotiations, it is not surprising that instead of a general presentation of world events with a due regard to proportion, we have before us rather a detailed and fairly connected narrative of German parliamentary crises and internal conditions as influenced incidentally by the external situation. Even from this limited standpoint, however, the book is instructively corroborative that "dieser Wilson" (page 360) did not err in his estimate of the autocratic power of the military caste who unmade Chancellors (page 126, von Bethmann) and named their successors (page 131, Michaelis) and decided other larger internal political questions. They met their defeat as parliamentary masters on July 19, 1917, when the Reichstag, over their protest (pages 128-130) adopted the peace resolution. To this act, and particularly to the "monstrous" conduct of Erzberger in proposing it, the author attributes the repulse of the Pope's efforts for peace in the summer of 1917 by the Allies and their will to fight on, because they now inferred that "the Central Powers were face to face

with internal collapse" (page 580). "The seed sown in July, 1917, brought its fateful crop in November, 1918" (page 153). This sentence contains the thesis of the book.

Whilst it is free of open rancor towards Germany's "pitiless foes," it is a book of a German for Germans—some Germans. It closes with a quotation from Treitschke.

GEORGE C. BUTTE.

Etudes sur l'Occupation Allemande en Belgique. By Albert Henry. Brussels: J. Lebègue & Co. pp. 464.

L'Œuvre du Comité National de Secours et d'Alimentation pendant la Guerre. By Albert Henry. Brussels: J. Lebègue & Co. pp. 361.

Referring to the books above described, Cardinal Mercier, who writes a preface for the second volume, informs us that the author was Secretary-General of the *Comité National de secours et d'alimentation* during the recent war and wrote the first-named volume as a witness and the second as an informed agent, courageous and tenacious in the service of an undertaking which saved the lives of the Belgian people and powerfully contributed to sustain its morale.

The first volume, relating to the German occupation in Belgium, opens with a spirited review of the conduct of the Germans and certain Flemish associates sympathetic with them in furthering the cause of Germany. This is followed by a history of the deportation of Belgian workmen to Germany, including a narrative of the protestations and interventions of neutral Powers with relation thereto. The condition of Belgian agriculture during the war is discussed, and the work closes with a history of the National Committee.

The second volume above referred to covers the work of the National Committee, and includes a glance at the historical situation of Belgium before the formation of the committee, then describing the difficulties of the committee's problem; its Belgian organizers; the assistance of neutrals; the struggles with the enemy, and the work of American Commission for Relief. The problems connected with the importation and distribution of supplies and the work of manufacturing under the supervision of the National Committee are dealt with at large. The details of the granting of relief to those in various positions, as, for instance, out-of-work families of those in the army, children, those discharged from the hospitals, etc., receive detailed attention. The general policy of the committee is also discussed at large.

With our point of view, we appreciate the tribute paid to the American Commission for its labors and the frank recognition of the value of the

work of Mr. Hoover and Mr. Brand Whitlock. The personal picture given of Mr. Hoover is not without its interest. The writer says:

Mr. Hoover possesses in a high degree the theatrical art, and he loves to look beyond the end sought so as to be sure of reaching it. Each time that he arrived in Belgium during the occupation, the Germans feared bombs of which, according to Monsieur Francqui, he always had his pockets full. How many times these bombs constrained them to yield upon points to which they had theretofore offered an irreducible resistance! Notwithstanding the coldness of his demeanor, which accentuates his truly American phlegm, Mr. Hoover, according to those who know him intimately, has a heart of gold.

Cardinal Mercier speaks of Brand Whitlock as a man of exquisite sensibility, personified uprightness, and an intelligence open to the most elevated problems of the moral conscience, displaying toward Belgium a profound sympathy and a constant desire to render aid.

The volumes, which may be considered complementary to each other, offer interesting and valuable views of the Belgian situation during the war.

JACKSON H. RALSTON.

Collected Legal Papers. By Oliver Wendell Holmes. New York: Harcourt, Brace & Howe. 1920.

The collection has been made by Mr. Harold J. Laski, to whom Mr. Justice Holmes, in a brief but characteristic preface, expresses "thanks for gathering these little fragments of my fleece that I have left upon the hedges of life."

There are twenty-eight papers and addresses, starting with one on "Early English Equity" which appeared in the *Law Quarterly Review* of London in 1885, and ending with one on "Natural Law," which was printed in the *Harvard Law Review* in 1918. The papers are brief, they average about eleven pages each. They are written with autocratic assurance, as becomes the brilliant son of "The Autocrat." They have, as might be expected, quite as much a literary as a legal turn, and by no means avoid paradox. There is a light touch, unusual and exotic erudition and somewhat of philosophy. None of the topics strictly belong to international law, and it is not a branch with which Mr. Justice Holmes has been especially identified, as he has been with comparative law.

Perhaps the two papers which are most interesting to the international lawyer, simply because of their topics, are those on Montesquieu (1900) and John Marshall (1901). The former appeared as an introduction to a reprint of the *Esprit des Lois* in 1900. In Montesquieu, Justice Holmes finds a congenial spirit, for, as he says, "Montesquieu was a man of the world and a man of Esprit," and he places him "in the canonical succession of the high priests of thought." He quotes with full appreciation Montes-

quieu's saying that the society of women spoils our morals and forms our taste, and again that "he never had a sorrow which an hour's reading would not dispel." Montesquieu was an international wit, scholar and critic, as his *Lettres Persanes* evidence no less than his *Esprit des Lois*. He was internationally accepted, and he noticed with pleasure that the sale of wine from his vineyards was increased in England by the publication of his great work. Justice Holmes says of him:

He was a precursor of political economy. He was the precursor of Burke when Burke seems a hundred years ahead of his time. The Frenchmen tell us that he was a precursor of Rousseau. He was an authority for the writers of the *Federalist*. He influenced and, to a great extent, started scientific theory in its study of societies, and he hardly less influenced practice in legislation, from Russia to the United States. His book had a dazzling success at the moment, and since then probably has done as much to remodel the world as any product of the eighteenth century, which burned so many forests and sowed so many fields . . . and this was the work of a lonely scholar sitting in a library.

This is high praise when we remember that the French Revolution, the Revolution of the Thirteen Colonies, the Constitution of the United States, Rousseau, Voltaire, Goethe, Burke, Pitt, Fox, Adam Smith, Washington, Franklin, Jefferson and Marshall, all were products of the eighteenth century. However, considerable kindly latitude is allowed to a preface and to a grave-stone.

It is for us to remember that the *Esprit des Lois* is a work often cited by the great writers on international law, at least in the past. Thus our own classic in international law, Wheaton, writes "Montesquieu, in his *Esprit des Lois*, says that every nation has a law of nations—even the Iroquois, who eat their prisoners, have one. They send and receive ambassadors; they know the laws of war and peace; the evil is, that their law of nations is not founded upon true principles,"—which may be admitted, even if we are progressing toward the same principles.

Sir Robert Phillimore quotes him in his compendious *Commentaries on International Law* no less than thirteen times, Calvo twice, Taylor twice, etc. As precedents and authorities have increased, writers on international law quote Homer and Theocritus, Virgil and Horace less often than in former generations and they likewise pass over the *Esprit des Lois*.

Montesquieu found general causes, moral or physical, for the grandeur and decadence of nations, and was among the earlier observers and recorders of such causes. Every one has been his follower, and later writers have had much more exact and abundant facts but none have excelled in wit.

The paper on John Marshall is simply Mr. Justice Holmes's remarks from the bench on February 4, 1901. That was the hundredth anniversary of the day on which Marshall took his seat as Chief Justice. It was kept by concerted action as "John Marshall Day" all over the country, a fine

lesson in respect for great minds and patriotic service. The five pages which Mr. Justice Holmes prints are his observations in answer to a motion that the court adjourn.

He expressed a wish, which is often apparent in his utterances, "to see things and people judged by more cosmopolitan standards," saying very finely "A man is bound to be parochial in his practice—to give his life, and if necessary his death, for the place where he has his roots. But his thinking should be cosmopolitan and detached. He should be able to criticise what he reveres and loves." He doubts whether "Marshall's work proved more than a strong intellect, a good style, personal ascendancy in his court, courage, justice and the convictions of his party."

Perhaps, if Mr. Beveridge's vivifying life of the great Chief Justice with its four volumes of splendid vindication, had then been published and had made plain the long unfaltering labors and achievement of Marshall and the vast effect of those labors on the development of our government, the estimate might have been more wholly generous, and the words of diminution might have been stricken out; but before he closed and declared "the court will now adjourn," Justice Holmes spoke some words of great breadth of view, justice and significance. He said:

The setting aside of this day in honor of a great judge may stand to a Virginian for the glory of his glorious State; to a patriot for the fact that time has been on Marshall's side, and that the theory for which Hamilton argued, and he decided, and Webster spoke, and Grant fought, and Lincoln died, is now our cornerstone. To the more abstract but farther reaching contemplation of the lawyer, it stands for the rise of a new body of jurisprudence, by which guiding principles are raised above the reach of statute and state, and judges are entrusted with a solemn and hitherto unheard-of authority and duty.

The little volume of collected legal papers could have come from no American jurist except Justice Holmes. They will do quite as much with the bar to maintain his intellectual reputation as his official opinions, and they will do far more with the public.

CHARLES NOBLE GREGORY.

A New Principle of International Law. By A. M. M. Montijn, LL.D.
The Hague: Belinfante Brothers. 1919. pp. 56.

This pamphlet, devoted to the cause of lasting peace, is an appeal to a new arbiter and servant of man, science, and to a new science, Anthro-Geo-graphy. The author reviews the various projects and programs, from the time of ancient Greece down through Roosevelt to the very present moment, for the prevention of war, only to find them all futile "so long as the states persist in the principle of their unlimited sovereignty . . . there can be no question of even the slightest possible organization amongst them."

The deepest cause of war is found in the varying density of population in European states, which fixed political boundaries emphasize more and more. The "New Principle" is a redistribution of territory periodically, about every fifty years, so as to increase the territory of the more densely populated states. The smaller states, like Belgium, need not be considered, since they are not likely to fight to extend their boundaries, nor Britain, as an island state. Eastward expansion is inevitable, France into Alsace and Lorraine, Germany into Russian Poland, Italy into Serbia, and Serbia into Greece. Existing inhabitants in each case would have to be moved out to make room for the newcomers. But this would be no worse than the results of the existing method of altering frontiers by war. And strategic frontiers have lost their real importance since the advent of the airplane. Besides, such migration would be a small matter, "seeing that by this means the calamities of war are avoided."

This little work furnishes another example of the constant agonizing revolt of the spirit of man against the world-anarchy which is war. That its "new principle" is almost fantastically impracticable does not seem to the author conclusive, nor does he seem to realize that the machinery to carry out his plan would necessitate the very world organization of which he despairs.

FRANK H. WOOD.

The Three Stages in the Evolution of the Law of Nations. By C. Van Vollenhoven. The Hague: Martinus Nijhoff. 1919. pp. 102.

The striking feature of this interesting booklet is its assertion that Vattel demoralized international law by grafting into it the idea of sovereignty. "Vattel may possibly have been a good man in the opinion of his relations and domestic servants; but he gave a Judas-kiss to Grotius's system," says our author; "he sides with Richelieu and calls his unbridled, arbitrary dealings 'sovereignty.' In Vattel we find the cheap finery of a theoretical equality of all states; for are not all equally sovereign?" "Grotius is the apostle of the rights of nations, perhaps the prophet of an ultimate League of Nations. Vattel is the absolute negation" of both. "The unbridled liberty to wage war for the sake of paramount power was not exposed and not renounced." In short, Grotius's distinction between just and unjust wars was abandoned, and all wars were alike good, *i.e.*, legal.

The author is skeptical about "this perfectly voluntary arbitration to which a sovereign state can never be forced to submit, but to which a prince's conscience delights to lead him—provided, of course, that the interests of his country will allow him." Vattel's "monstrous conception of 'sovereignty' destroyed the work of The Hague Peace Conferences, and denied that states could commit crimes. Recent examples of such crimes

are cited, and the law that tolerated them is termed "this misshapen conglomeration of hypocrisy and cynicism."

The "third period," since 1914, is marked by a return to the spirit of Grotius. War is either a crime, or else the punishment of a "crime of the country that sets it ablaze." Our author would abolish the term and the thing, "neutral," a word Grotius never uses, though it was used in his day. Offensive and defensive alliances are also anathema in this new day, because they compel nations "to sustain their ally even when he commits the worst crime a state can commit, viz., the crime of assailing other nations."

High tribute is paid to the work of Bryan in his arbitration treaties. "Bryan's formula of 1913 is a treasure trove."

The style is vigorous, burning as it does with the glowing hatred of war which marked the year 1918, when it was written. The few typographical errors do not in any case conceal the meaning.

FRANK H. WOOD.

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HOPE K. THOMPSON.

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TREATY OF PEACE BETWEEN THE ALLIED POWERS AND TURKEY¹

Signed at Sèvres, August 10, 1920.

THE BRITISH EMPIRE, FRANCE, ITALY AND JAPAN,

These Powers being described in the present Treaty as the Principal Allied Powers;

ARMENIA, BELGIUM, GREECE, THE HEDJAZ, POLAND, PORTUGAL, ROMANIA, THE SERB-CROAT-SLOVENE STATE AND CZECHO-SLOVAKIA,

These Powers constituting, with the Principal Powers mentioned above, the Allied Powers,

of the one part;

And TURKEY,

of the other part.

Whereas, on the request of the Imperial Ottoman Government, an Armistice was granted to Turkey on October 30, 1918, by the Principal Allied Powers in order that a Treaty of Peace might be concluded, and

Whereas the Allied Powers are equally desirous that the war in which certain among them were successively involved, directly or indirectly, against Turkey, and which originated in the declaration of war against Serbia on July 28, 1914, by the former Imperial and Royal Austro-Hungarian Government, and in the hostilities opened by Turkey against the Allied Powers on October 29, 1914, and conducted by Germany in alliance with Turkey, should be replaced by a firm, just and durable Peace,

For this purpose the HIGH CONTRACTING PARTIES have appointed as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND OF THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA:

Sir George Dixon GRAHAME, K.C.V.O., Minister Plenipotentiary of His Britannic Majesty at Paris;

And

for the DOMINION OF CANADA:

The Honourable Sir George Halsey PERLEY, K.C.M.G., High Commissioner for Canada in the United Kingdom;

¹ British Treaty Series No. 11 (1920). The maps which accompany the treaty are too large and detailed for reproduction in this SUPPLEMENT.

for the COMMONWEALTH OF AUSTRALIA :

The Right Honourable Andrew FISHER, High Commissioner for Australia in the United Kingdom;

for the DOMINION OF NEW ZEALAND :

Sir George Dixon GRAHAME, K.C.V.O., Minister Plenipotentiary of His Britannic Majesty at Paris;

for the UNION OF SOUTH AFRICA :

Mr. Reginald Andrew BLANKENBERG, O.B.E., Acting High Commissioner for the Union of South Africa in the United Kingdom;

for INDIA :

Sir Arthur HIRTZEL, K.C.B., Assistant Under Secretary of State for India;

THE PRESIDENT OF THE FRENCH REPUBLIC :

Mr. Alexandre MILLERAND, President of the Council, Minister for Foreign Affairs;

Mr. Frédéric FRANÇOIS-MARSAL, Minister of Finance;

Mr. Auguste Paul-Louis ISAAC, Minister of Commerce and Industry;

Mr. Jules CAMBON, Ambassador of France;

Mr. Georges Maurice PALÉOLOGUE, Ambassador of France, Secretary-General of the Ministry of Foreign Affairs;

HIS MAJESTY THE KING OF ITALY :

Count Lelio Bonin LONGARE, Senator of the Kingdom, Ambassador Extraordinary and Plenipotentiary of H.M. the King of Italy at Paris;

General Giovanni MARIETTI, Italian Military Representative on the Supreme War Council;

HIS MAJESTY THE EMPEROR OF JAPAN :

Viscount CHINDA, Ambassador Extraordinary and Plenipotentiary of H.M. the Emperor of Japan at London;

Mr. K. MATSUI, Ambassador Extraordinary and Plenipotentiary of H.M. the Emperor of Japan at Paris;

ARMENIA :

Mr. Avetis AHARONIAN, President of the Delegation of the Armenian Republic;

HIS MAJESTY THE KING OF THE BELGIANS :

Mr. Jules VAN DEN HEUVEL, Envoy Extraordinary and Minister Plenipotentiary, Minister of State;

Mr. Rolin JAEQUEMYS, Member of the Institute of Private International Law, Secretary-General of the Belgian Delegation;

HIS MAJESTY THE KING OF THE HELLENES :

Mr. Eleftherios K. VENISÉLOS, President of the Council of Ministers;

Mr. Athos ROMANOS, Envoy Extraordinary and Minister Plenipotentiary of H.M. the King of the Hellenes at Paris;

HIS MAJESTY THE KING OF THE HEDJAZ:

.....

THE PRESIDENT OF THE POLISH REPUBLIC:

Count Maurice ZAMOYSKI, Envoy Extraordinary and Minister Plenipotentiary of the Polish Republic at Paris;
Mr. Erasme PILTZ;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Dr. Affonso da COSTA, formerly President of the Council of Ministers;

HIS MAJESTY THE KING OF ROUMANIA:

Mr. Nicolae TITULESCU, Minister of Finance;
Prince Dimitrie GHICA, Envoy Extraordinary and Minister Plenipotentiary of H.M. the King of Roumania at Paris;

HIS MAJESTY THE KING OF THE SERBS, THE CROATS AND THE SLOVENES:

Mr. Nicolas P. PACHITCH, formerly President of the Council of Ministers;
Mr. Ante TRUMBIC, Minister for Foreign Affairs;

THE PRESIDENT OF THE CZECHO-SLOVAK REPUBLIC:

Mr. Edward BENES, Minister for Foreign Affairs;
Mr. Stephen OSUSKY, Envoy Extraordinary and Minister Plenipotentiary of the Czecho-Slovak Republic at London;

TURKEY:

General HAADI Pasha, Senator;
RIZA TEVFIK Bey, Senator;
RECHAD HALISS Bey, Envoy Extraordinary and Minister Plenipotentiary of Turkey at Berne;

Who, having communicated their full powers, found in good and due form, have agreed as follows:

From the coming into force of the present Treaty the state of war will terminate.

From that moment, and subject to the provisions of the present Treaty, official relations will exist between the Allied Powers and Turkey.

PART I.—THE COVENANT OF THE LEAGUE OF NATIONS.

[Identical with Part I of the Treaty of Peace with Hungary, June 4, 1920, printed in the January, 1921, SUPPLEMENT (Vol. 15, p. 4).]

PART II.—FRONTIERS OF TURKEY.

ARTICLE 27.

I. In Europe, the frontiers of Turkey will be laid down as follows (see annexed map No. 1):²

(1) *The Black Sea:*

from the entrance of the Bosphorus to the point described below.

(2) *With Greece:*

From a point to be chosen on the Black Sea near the mouth of the Biyuk Dere, situated about 7 kilometres northwest of Podima, southwards to the most northwesterly point of the limit of the basin of the Istranja Dere (about 8 kilometres northwest of Istranja),

a line to be fixed on the ground passing through Kapilja Dagħ and Uchbunar Tepe;

thence southsoutheastwards to a point to be chosen on the railway from Chorlu to Chatalja about 1 kilometre west of the railway station of Sinekli,

a line following as far as possible the western limit of the basin of the Istranja Dere;

thence southeastwards to a point to be chosen between Fener and Kurfali on the watershed between the basins of those rivers which flow into Biyuk Chekmeje Geul, on the northeast, and the basin of those rivers which flow direct into the Sea of Marmora on the southwest,

a line to be fixed on the ground passing south of Sinekli;

thence southeastwards to a point to be chosen on the Sea of Marmora about 1 kilometre southwest of Kalikratia,

a line following as far as possible this watershed.

(3) *The Sea of Marmora:*

from the point defined above to the entrance of the Bosphorus.

II. In Asia, the frontiers of Turkey will be laid down as follows (see annexed map No. 2):

(1) *On the West and South:*

From the entrance of the Bosphorus into the Sea of Marmora to a point described below, situated in the eastern Mediterranean Sea in the neighborhood of the Gulf of Alexandretta near Karataş Burun,

the Sea of Marmora, the Dardanelles, and the Eastern Mediterranean Sea; the islands of the Sea of Marmora, and those which are situated

² Map omitted from this SUPPLEMENT.

within a distance of 3 miles from the coast, remaining Turkish, subject to the provisions of Section IV and Articles 84 and 122, Part III (Political Clauses).

(2) *With Syria:*

From a point to be chosen on the eastern bank of the outlet of the Hassan Dede, about 3 kilometres northwest of Karatash Burun, north-eastwards to a point to be chosen on the Djaihun Irmak about 1 kilometre north of Babeli,

a line to be fixed on the ground passing north of Karatash;

thence to Kesik Kale,

the course of the Djaihun Irmak upstream;

thence northeastwards to a point to be chosen on the Djaihun Irmak about 15 kilometres eastsoutheast of Karsbazar,

a line to be fixed on the ground passing north of Kara Tepe;

thence to the bend in the Djaihun Irmak situated west of Duldul Dagh, the course of the Djaihun Irmak upstream;

thence in a general southeasterly direction to a point to be chosen on Emir Musi Dagh about 15 kilometres south-south-west of Giaour Geul,

a line to be fixed on the ground at a distance of about 18 kilometres from the railway, and leaving Duldul Dagh to Syria;

thence eastwards to a point to be chosen about 5 kilometres north of Urfa,

a generally straight line from west to east to be fixed on the ground passing north of the roads connecting the towns of Baghche, Aintab, Biridjik, and Urfa and leaving the last three named towns to Syria;

thence eastwards to the south-western extremity of the bend in the Tigris about 6 kilometres north of Azekh (27 kilometres west of Djezire-ibn-Omar),

a generally straight line from west to east to be fixed on the ground leaving the town of Mardin to Syria;

thence to a point to be chosen on the Tigris between the point of confluence of the Khabur Su with the Tigris and the bend in the Tigris situated about 10 kilometres north of this point,

the course of the Tigris downstream, leaving the island on which is situated the town of Djezire-ibn-Omar to Syria.

(3) *With Mesopotamia:*

Thence in a general easterly direction to a point to be chosen on the northern boundary of the vilayet of Mosul,

a line to be fixed on the ground;

thence eastwards to the point where it meets the frontier between Turkey and Persia,

the northern boundary of the vilayet of Mosul, modified, however, so as to pass south of Amadia.

(4) *On the East and the North East:*

From the point above defined to the Black Sea, the existing frontier between Turkey and Persia, then the former frontier between Turkey and Russia, subject to the provisions of Article 89.

(5) *The Black Sea.*

ARTICLE 28.

The frontiers described by the present Treaty are traced on the one in a million maps attached to the present Treaty. In case of differences between the text and the map, the text will prevail.

ARTICLE 29.

Boundary Commissions, whose composition is or will be fixed in the present Treaty or in Treaties supplementary thereto, will have to trace these frontiers on the ground.

They shall have the power, not only of fixing those portions which are defined as "a line to be fixed on the ground," but also, if the Commission considers it necessary, of revising in matters of detail portions defined by administrative boundaries or otherwise. They shall endeavour in all cases to follow as nearly as possible the descriptions given in the Treaties, taking into account, as far as possible, administrative boundaries and local economic interests.

The decisions of the Commissions will be taken by a majority, and shall be binding on the parties concerned.

The expenses of the Boundary Commissions will be borne in equal shares by the parties concerned.

ARTICLE 30.

In so far as frontiers defined by a waterway are concerned, the phrases "course" or "channel" used in the descriptions of the present Treaty signify, as regards non-navigable rivers, the median line of the waterway or of its principal branch, and, as regards navigable rivers, the median line of the principal channel of navigation. It will rest with the Boundary Commissions provided for by the present Treaty to specify whether the frontier line shall follow any changes of the course or channel which may take place, or whether it shall be definitely fixed by the position of the course or channel at the time when the present Treaty comes into force.

In the absence of provisions to the contrary in the present Treaty, islands and islets lying within three miles of the coast are included within the frontier of the coastal State.

ARTICLE 31.

The various States concerned undertake to furnish to the Commissions all documents necessary for their tasks, especially authentic copies of agreements fixing existing or old frontiers, all large scale maps in existence,

geodetic data, surveys completed but unpublished, and information concerning the changes of frontier watercourses. The maps, geodetic data, and surveys, even if unpublished, which are in the possession of the Turkish authorities must be delivered at Constantinople, within thirty days from the coming into force of the present Treaty, to such representative of the Commissions concerned as may be appointed by the principal Allied Powers.

The States concerned also undertake to instruct the local authorities to communicate to the Commissions all documents, especially plans, cadastral and land books, and to furnish on demand all details regarding property, existing economic conditions, and other necessary information.

ARTICLE 32.

The various States interested undertake to give every assistance to the Boundary Commissions, whether directly or through local authorities, in everything that concerns transport, accommodation, labour, materials (sign posts, boundary pillars) necessary for the accomplishment of their mission.

In particular the Turkish Government undertakes to furnish to the Principal Allied Powers such technical personnel as they may consider necessary to assist the Boundary Commissions in the accomplishment of their mission.

ARTICLE 33.

The various States interested undertake to safeguard the trigonometrical points, signals, posts or frontier marks erected by the Commissions.

ARTICLE 34.

The pillars will be placed so as to be intervisible; they will be numbered, and their position and their number will be noted on a cartographic document.

ARTICLE 35.

The protocols defining the boundary and the maps and documents attached thereto will be made out in triplicate, of which two copies will be forwarded to the Governments of the limitrophe States, and the third to the Government of the French Republic, which will deliver authentic copies to the Powers who sign the present Treaty.

PART III.—POLITICAL CLAUSES.

SECTION I.—CONSTANTINOPLE.

ARTICLE 36.

Subject to the provisions of the present Treaty, the High Contracting Parties agree that the rights and title of the Turkish Government over Constantinople shall not be affected, and that the said Government and

His Majesty the Sultan shall be entitled to reside there and to maintain there the capital of the Turkish State.

Nevertheless, in the event of Turkey failing to observe faithfully the provisions of the present Treaty, or of any treaties or conventions supplementary thereto, particularly as regards the protection of the rights of racial, religious or linguistic minorities, the Allied Powers expressly reserve the right to modify the above provisions, and Turkey hereby agrees to accept any dispositions which may be taken in this connection.

SECTION II.—STRAITS.

ARTICLE 37.

The navigation of the Straits, including the Dardanelles, the Sea of Marmora and the Bosphorus, shall in future be open, both in peace and war, to every vessel of commerce or of war and to military and commercial aircraft, without distinction of flag.

These waters shall not be subject to blockade, nor shall any belligerent right be exercised nor any act of hostility be committed within them, unless in pursuance of a decision of the Council of the League of Nations.

ARTICLE 38.

The Turkish Government recognizes that it is necessary to take further measures to ensure the freedom of navigation provided for in Article 37, and accordingly delegates, so far as it is concerned, to a Commission to be called the "Commission of the Straits," and hereinafter referred to as "the Commission," the control of the waters specified in Article 39.

The Greek Government, so far as it is concerned, delegates to the Commission the same powers and undertakes to give it in all respects the same facilities.

Such control shall be exercised in the name of the Turkish and Greek Governments respectively, and in the manner provided in this Section.

ARTICLE 39.

The authority of the Commission will extend to all the waters between the Mediterranean mouth of the Dardanelles and the Black Sea mouth of the Bosphorus, and to the waters within three miles of each of these mouths.

This authority may be exercised on shore to such extent as may be necessary for the execution of the provisions of this Section.

ARTICLE 40.

The Commission shall be composed of representatives appointed respectively by the United States of America (if and when that Government is willing to participate), the British Empire, France, Italy, Japan, Russia

(if and when Russia becomes a member of the League of Nations), Greece, Roumania, and Bulgaria and Turkey (if and when the two latter States become members of the League of Nations). Each Power shall appoint one representative. The representatives of the United States of America, the British Empire, France, Italy, Japan and Russia shall each have two votes. The representatives of Greece, Roumania, and Bulgaria and Turkey shall each have one vote. Each Commissioner shall be removable only by the Government which appointed him.

ARTICLE 41.

The Commissioners shall enjoy, within the limits specified in Article 39, diplomatic privileges and immunities.

ARTICLE 42.

The Commission will exercise the powers conferred on it by the present Treaty in complete independence of the local authority. It will have its own flag, its own budget, and its separate organisation.

ARTICLE 43.

Within the limits of its jurisdiction as laid down in Article 39 the Commission will be charged with the following duties:

- (a) the execution of any works considered necessary for the improvement of the channels or the approaches to harbours;
- (b) the lighting and buoying of the channels;
- (c) the control of pilotage and towage;
- (d) the control of anchorages;
- (e) the control necessary to assure the application in the ports of Constantinople and Haidar Pasha of the régime prescribed in Articles 335 to 344, Part XI (Ports, Waterways and Railways) of the present Treaty;
- (f) the control of all matters relating to wrecks and salvage;
- (g) the control of lighterage;

ARTICLE 44.

In the event of the Commission finding that the liberty of passage is being interfered with, it will inform the representatives at Constantinople of the Allied Powers providing the occupying forces provided for in Article 178. These representatives will thereupon concert with the naval and military commanders of the said forces such measures as may be deemed necessary to preserve the freedom of the Straits. Similar action shall be taken by the said representatives in the event of any external action threatening the liberty of passage of the Straits.

ARTICLE 45.

For the purpose of the acquisition of any property or the execution of any permanent works which may be required, the Commission shall be entitled to raise such loans as it may consider necessary. These loans will be secured, so far as possible, on the dues to be levied on the shipping using the Straits, as provided in Article 53.

ARTICLE 46.

The functions previously exercised by the Constantinople Superior Council of Health and the Turkish Sanitary Administration which was directed by the said Council, and the functions exercised by the National Life-boat Service of the Bosphorus, will within the limits specified in Article 39 be discharged under the control of the Commission and in such manner as it may direct.

The Commission will coöperate in the execution of any common policy adopted by the League of Nations for preventing and combating disease.

ARTICLE 47.

Subject to the general powers of control conferred upon the Commission, the rights of any persons or companies now holding concessions relating to lighthouses, docks, quays or similar matters shall be maintained; but the Commission shall be entitled if it thinks it necessary in the general interest to buy out or modify such rights upon the conditions laid down in Article 311, Part IX (Economic Clauses) of the present Treaty, or itself to take up a new concession.

ARTICLE 48.

In order to facilitate the execution of the duties with which it is entrusted by this Section, the Commission shall have power to organise such a force of special police as may be necessary. This force shall be drawn so far as possible from the native population of the zone of the Straits and islands referred to in Article 178, Part V (Military, Naval and Air Clauses), excluding the islands of Lemnos, Imbros, Samothrace, Tenedos and Mitylene. The said force shall be commanded by foreign police officers appointed by the Commission.

ARTICLE 49.

In the portion of the zone of the Straits, including the islands of the Sea of Marmora, which remains Turkish, and pending the coming into force of the reform of the Turkish judicial system provided for in Article 136, all infringements of the regulations and by-laws made by the Commission, committed by nationals of capitulatory Powers, shall be dealt with by the Consular Courts of the said Powers. The Allied Powers agree

to make such infringements justiciable before their Consular Courts or authorities. Infringements committed by Turkish nationals or nationals of non-capitulatory Powers shall be dealt with by the competent Turkish judicial authorities.

In the portion of the said zone placed under Greek sovereignty such infringements will be dealt with by the competent Greek judicial authorities.

ARTICLE 50.

The officers or members of the crew of any merchant vessel within the limits of the jurisdiction of the Commission who may be arrested on shore for any offence committed either ashore or afloat within the limits of the said jurisdiction shall be brought before the competent judicial authority by the Commission's police. If the accused was arrested otherwise than by the Commission's police he shall immediately be handed over to them.

ARTICLE 51.

The Commission shall appoint such subordinate officers or officials as may be found indispensable to assist it in carrying out the duties with which it is charged.

ARTICLE 52.

In all matters relating to the navigation of the waters within the limits of the jurisdiction of the Commission all the ships referred to in Article 37 shall be treated upon a footing of absolute equality.

ARTICLE 53.

Subject to the provisions of Article 47 the existing rights under which dues and charges can be levied for various purposes, whether direct by the Turkish Government or by international bodies or private companies, on ships or cargoes within the limits of the jurisdiction of the Commission shall be transferred to the Commission. The Commission shall fix these dues and charges at such amounts only as may be reasonably necessary to cover the cost of the works executed and the services rendered to shipping, including the general costs and expenses of the administration of the Commission, and the salaries and pay provided for in paragraph 3 of the Annex to this Section.

For these purposes only and with the prior consent of the Council of the League of Nations the Commission may also establish dues and charges other than those now existing and fix their amounts.

ARTICLE 54.

All dues and charges imposed by the Commission shall be levied without any discrimination and on a footing of absolute equality between all vessels, whatever their port of origin, destination or departure, their flag or ownership, or the nationality or ownership of their cargoes.

This disposition does not affect the right of the Commission to fix in accordance with tonnage the dues provided for by this Section.

ARTICLE 55.

The Turkish and Greek Governments respectively undertake to facilitate the acquisition by the Commission of such land and buildings as the Commission shall consider it necessary to acquire in order to carry out effectively the duties with which it is entrusted.

ARTICLE 56.

Ships of war in transit through the waters specified in Article 39 shall conform in all respects to the regulations issued by the Commission for the observance of the ordinary rules of navigation and of sanitary requirements.

ARTICLE 57.

(1) Belligerent warships shall not revictual nor take in stores, except so far as may be strictly necessary to enable them to complete the passage of the Straits and to reach the nearest port where they can call, nor shall they replenish or increase their supplies of war material or their armament or complete their crews, within the waters under the control of the Commission. Only such repairs as are absolutely necessary to render them seaworthy shall be carried out, and they shall not add in any manner whatever to their fighting force. The Commission shall decide what repairs are necessary, and these must be carried out with the least possible delay.

(2) The passage of belligerent warships through the waters under the control of the Commission shall be effected with the least possible delay, and without any other interruption than that resulting from the necessities of the service.

(3) The stay of such warships at ports within the jurisdiction of the Commission shall not exceed twenty-four hours except in case of distress. In such case they shall be bound to leave as soon as possible. An interval of at least twenty-four hours shall always elapse between the sailing of a belligerent ship from the waters under the control of the Commission and the departure of a ship belonging to an opposing belligerent.

(4) Any further regulations affecting in time of war the waters under the control of the Commission, and relating in particular to the passage of war material and contraband destined for the enemies of Turkey, or revictualling, taking in stores or carrying out repairs in the said waters, will be laid down by the League of Nations.

ARTICLE 58.

Prizes shall in all respects be subjected to the same conditions as belligerent vessels of war.

ARTICLE 59.

No belligerent shall embark or disembark troops, munitions of war or warlike materials in the waters under the control of the Commission, except in case of accidental hindrance of the passage, and in such cases the passage shall be resumed with all possible despatch.

ARTICLE 60.

Nothing in Articles 57, 58 or 59 shall be deemed to limit the powers of a belligerent or belligerents acting in pursuance of a decision by the Council of the League of Nations.

ARTICLE 61.

Any differences which may arise between the Powers as to the interpretation or execution of the provisions of this Section, and as regards Constantinople and Haidar Pasha of the provisions of Articles 335 to 344, Part XI (Ports, Waterways, and Railways) shall be referred to the Commission. In the event of the decision of the Commission not being accepted by any Power, the question shall, on the demand of any Power concerned, be settled as provided by the League of Nations, pending whose decision the ruling of the Commission will be carried out.

ANNEX.

1.

The Chairmanship of the Commission of the Straits shall be rotatory for the period of two years among the members of the Commission entitled to two votes.

The Commission shall take decisions by a majority vote, and the Chairman shall have a casting vote. Abstention shall be regarded as a vote against the proposal under discussion.

Each of the Commissioners will have the right to designate a deputy Commissioner to replace him in his absence.

2.

The salary of each member of the Commission will be paid by the Government which appointed him; these salaries will be fixed at reasonable amounts agreed upon from time to time between the Governments represented on the Commission.

3.

The salaries of the police officers referred to in Article 48, of such other officials and officers as may be appointed under Article 51, and the pay of the local police referred to in Article 48, shall be paid out of the receipts from the dues and charges levied on shipping.

The Commission shall frame regulations as to the terms and conditions of employment of all officers and officials appointed by it.

4.

The Commission shall have at its disposal such vessels as may be necessary to enable it to carry out its functions as laid down in this Section and Annex.

5.

In order to carry out all the duties with which it is charged by the provisions of this Section and Annex and within the limits therein laid down the Commission will have the power to prepare, issue and enforce the necessary regulations; this power will include the right of amending so far as may be necessary or repealing the existing regulations.

6.

The Commission shall frame regulations as to the manner in which the accounts of all revenues and expenditure of the funds under its control shall be kept, the auditing of such accounts and the publication every year of a full and accurate report thereof.

SECTION III.—KURDISTAN.

ARTICLE 62.

A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia, as defined in Article 27, II, (2) and (3). If unanimity cannot be secured on any question, it will be referred by the members of the Commission to their respective Governments. The scheme shall contain full safeguards for the protection of the Assyro-Chaldeans and other racial or religious minorities within these areas, and with this object a Commission composed of British, French, Italian, Persian and Kurdish representatives shall visit the spot to examine and decide what rectifications, if any, should be made in the Turkish frontier where, under the provisions of the present Treaty, that frontier coincides with that of Persia.

ARTICLE 63.

The Turkish Government hereby agrees to accept and execute the decisions of both the Commissions mentioned in Article 62 within three months from their communication to the said Government.

ARTICLE 64.

If within one year from the coming into force of the present Treaty the Kurdish peoples within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such a recommendation, and to renounce all rights and title over these areas.

The detailed provisions for such renunciation will form the subject of a separate agreement between the Principal Allied Powers and Turkey.

If and when such renunciation takes place, no objection will be raised by the Principal Allied Powers to the voluntary adhesion to such an independent Kurdish State of the Kurds inhabiting that part of Kurdistan which has hitherto been included in the Mosul Vilayet.

SECTION IV.—SMYRNA.

ARTICLE 65.

The provisions of this Section will apply to the city of Smyrna and the adjacent territory defined in Article 66, until the determination of their final status in accordance with Article 83.

ARTICLE 66.

The geographical limits of the territory adjacent to the city of Smyrna will be laid down as follows (see annexed map No. 1):

From the mouth of the river which flows into the *Ægean* Sea about 5 kilometres north of Skalanova, eastwards,

the course of this river upstream;

then southeastwards, the course of the southern branch of this river;

then southeastwards, to the western point of the crest of the Gumush Dagħ;

a line to be fixed on the ground passing west of Chinar K, and east of Akche Ova;

thence northeastwards, this crest line;

thence northwards to a point to be chosen on the railway from Ayasuluk to Deirmendik about 1 kilometre west of Balachik station,

a line to be fixed on the ground leaving the road and railway from Sokia to Balachik station entirely in Turkish territory;

thence northwards to a point to be chosen on the southern boundary of the Sandjak of Smyrna,

a line to be fixed on the ground;

thence to a point to be chosen in the neighbourhood of Bos Dagħ situated about 15 kilometres northeast of Odemish,

the southern and eastern boundary of the Sandjak of Smyrna;
thence northwards to a point to be chosen on the railway from Manisa to Alashehr about 6 kilometres west of Salihli,
a line to be fixed on the ground;
thence northwards to Geurenez Dag, h,
a line to be fixed on the ground passing east of Mermer Geul west of Kemer, crossing the Kum Chai approximately south of Akshalan, and then following the watershed west of Kavakalan;
thence northwestwards to a point to be chosen on the boundary between the Cazas of Kirkagach and Ak Hissar about 18 kilometres east of Kirkagach and 20 kilometres north of Ak Hissar,
a line to be fixed on the ground;
thence westwards to its junction with the boundary of the Caza of Soma,
the southern boundary of the Caza of Kirkagach,
thence westwards to its junction with the boundary of the Sandjak of Smyrna,
the southern boundary of the Caza of Soma;
thence northwards to its junction with the boundary of the Vilayet of Smyrna,
the northeastern boundary of the Sandjak of Smyrna;
thence westwards to a point to be chosen in the neighbourhood of Charpajik (Tepe).
the northern boundary of the Vilayet of Smyrna;
thence northwards to a point to be chosen on the ground about 4 kilometres southwest of Keuiluje,
a line to be fixed on the ground;
thence westwards to a point to be selected on the ground between Cape Dahlina and Kemer Iskele,
a line to be fixed on the ground passing south of Kemer and Kemer Iskele together with the road joining these places.

ARTICLE 67.

A Commission shall be constituted within fifteen days from the coming into force of the present Treaty to trace on the spot the boundaries of the territories described in Article 66. This Commission shall be composed of three members nominated by the British, French and Italian Governments respectively, one member nominated by the Greek Government, and one nominated by the Turkish Government.

ARTICLE 68.

Subject to the provisions of this Section, the city of Smyrna and the territory defined in Article 66 will be assimilated, in the application of the present Treaty, to territory detached from Turkey.

ARTICLE 69.

The city of Smyrna and the territory defined in Article 66 remain under Turkish sovereignty. Turkey however transfers to the Greek Government the exercise of her rights of sovereignty over the city of Smyrna and the said territory. In witness of such sovereignty the Turkish flag shall remain permanently hoisted over an outer fort in the town of Smyrna. The fort will be designated by the Principal Allied Powers.

ARTICLE 70.

The Greek Government will be responsible for the administration of the city of Smyrna and the territory defined in Article 66, and will effect this administration by means of a body of officials which it will appoint specially for the purpose.

ARTICLE 71.

The Greek Government shall be entitled to maintain in the city of Smyrna and the territory defined in Article 66 the military forces required for the maintenance of order and public security.

ARTICLE 72.

A local parliament shall be set up with an electoral system calculated to ensure proportional representation of all sections of the population, including racial, linguistic and religious minorities. Within six months from the coming into force of the present Treaty the Greek Government shall submit to the Council of the League of Nations a scheme for an electoral system complying with the above requirements; this scheme shall not come into force until approved by a majority of the Council.

The Greek Government shall be entitled to postpone the elections for so long as may be required for the return of the inhabitants who have been banished or deported by the Turkish authorities, but such postponement shall not exceed a period of one year from the coming into force of the present Treaty.

ARTICLE 73.

The relations between the Greek administration and the local parliament shall be determined by the said administration in accordance with the principles of the Greek Constitution.

ARTICLE 74.

Compulsory military service shall not be enforced in the city of Smyrna and the territory defined in Article 66 pending the final determination of their status in accordance with Article 83.

ARTICLE 75.

The provisions of the separate Treaty referred to in Article 86 relating to the protection of racial, linguistic and religious minorities, and to free-

dom of commerce and transit, shall be applicable to the city of Smyrna and the territory defined in Article 66.

ARTICLE 76.

The Greek Government may establish a Customs boundary along the frontier line defined in Article 66, and may incorporate the city of Smyrna and the territory defined in the said Article in the Greek customs system.

ARTICLE 77.

The Greek Government engages to take no measures which would have the effect of depreciating the existing Turkish currency, which shall retain its character as legal tender pending the determination, in accordance with the provisions of Article 83, of the final status of the territory.

ARTICLE 78.

The provisions of Part XI (Ports, Waterways and Railways) relating to the régime of ports of international interest, free ports and transit shall be applicable to the city of Smyrna and the territory defined in Article 66.

ARTICLE 79.

As regards nationality, such inhabitants of the city of Smyrna and the territory defined in Article 66 as are of Turkish nationality and cannot claim any other nationality under the terms of the present Treaty shall be treated on exactly the same footing as Greek nationals. Greece shall provide for their diplomatic and consular protection abroad.

ARTICLE 80.

The provisions of Article 241, Part VIII (Financial Clauses) will apply in the case of the city of Smyrna and the territory defined in Article 66.

The provisions of Article 293, Part IX (Economic Clauses) will not be applicable in the case of the said city and territory.

ARTICLE 81.

Until the determination, in accordance with the provisions of Article 83, of the final status of Smyrna and the territory defined in Article 66, the rights to exploit the salt marshes of Phoea belonging to the Administration of the Ottoman Public Debt, including all plant and machinery and materials for transport by land or sea, shall not be altered or interfered with. No tax or charge shall be imposed during this period on the manufacture, exportation or transport of salt produced from these marshes. The Greek administration will have the right to regulate and tax the consumption of salt at Smyrna and within the territory defined in Article 66.

If after the expiration of the period referred to in the preceding para-

graph Greece considers it opportune to effect changes in the provisions above set forth, the salt marshes of Phoea will be treated as a concession and the guarantees provided by Article 312, Part IX (Economic Clauses) will apply, subject however to the provisions of Article 246, Part VIII (Financial Clauses) of the present Treaty.

ARTICLE 82.

Subsequent agreements will decide all questions which are not decided by the present Treaty and which may arise from the execution of the provisions of this Section.

ARTICLE 83.

When a period of five years shall have elapsed after the coming into force of the present Treaty the local parliament referred to in Article 72 may, by a majority of votes, ask the Council of the League of Nations for the definitive incorporation in the Kingdom of Greece of the city of Smyrna and the territory defined in Article 66. The Council may require, as a preliminary, a plebiscite under conditions which it will lay down.

In the event of such incorporation as a result of the application of the foregoing paragraph, the Turkish sovereignty referred to in Article 69 shall cease. Turkey hereby renounces in that event in favour of Greece all rights and title over the city of Smyrna and the territory defined in Article 66.

SECTION V.—GREECE.

ARTICLE 84.

Without prejudice to the frontiers of Bulgaria laid down by the Treaty of Peace signed at Neuilly-sur-Seine on November 27, 1919, Turkey renounces in favour of Greece all rights and title over the territories of the former Turkish Empire in Europe situated outside the frontiers of Turkey as laid down by the present Treaty.

The islands of the Sea of Marmora are not included in the transfer of sovereignty effected by the above paragraph.

Turkey further renounces in favour of Greece all her rights and title over the islands of Imbros and Tenedos. The decision taken by the Conference of Ambassadors at London in execution of Articles 5 of the Treaty of London of May 17/30, 1913, and 15 of the Treaty of Athens of November 1/14, 1913, and notified to the Greek Government on February 13, 1914, relating to the sovereignty of Greece over the other islands of the Eastern Mediterranean, particularly Lemnos, Samothrace, Mytilene, Chios, Samos and Nikaria, is confirmed, without prejudice to the provisions of the present Treaty relating to the islands placed under the sovereignty of Italy and referred to in Article 122, and to the islands lying less than three miles from the coast of Asia. (*See map No. 1.*)

Nevertheless, in the portion of the zone of the Straits and the islands, referred to in Article 178, which under the present Treaty are placed under Greek sovereignty, Greece accepts and undertakes to observe, failing any contrary stipulation in the present Treaty, all the obligations which, in order to assure the freedom of the Straits, are imposed by the present Treaty on Turkey in that portion of the said zone, including the islands of the Sea of Marmora, which remains under Turkish sovereignty.

ARTICLE 85.

A Commission shall be constituted within fifteen days from the coming into force of the present Treaty to trace on the spot the frontier line described in Article 27, I (2). This Commission shall be composed of four members nominated by the Principal Allied Powers, one member nominated by Greece, and one member nominated by Turkey.

ARTICLE 86.

Greece accepts and agrees to embody in a separate Treaty such provisions as may be deemed necessary, particularly as regards Adrianople, to protect the interests of inhabitants of that State who differ from the majority of the population in race, language, or religion.

Greece further accepts and agrees to embody in a separate Treaty such provisions as may be deemed necessary to protect freedom of transit and equitable treatment for the commerce of other nations.

ARTICLE 87.

The proportion and nature of the financial obligations of Turkey which Greece will have to assume on account of the territory placed under her sovereignty will be determined in accordance with Articles 241 to 244, Part VIII (Financial Clauses) of the present Treaty.

Subsequent agreements will decide all questions which are not decided by the present Treaty and which may arise in consequence of the transfer of the said territories.

SECTION VI.—ARMENIA.

ARTICLE 88.

Turkey, in accordance with the action already taken by the Allied Powers, hereby recognizes Armenia as a free and independent State.

ARTICLE 89.

Turkey and Armenia as well as the other High Contracting Parties agree to submit to the arbitration of the President of the United States of America the question of the frontier to be fixed between Turkey and Armenia in the Vilayets of Erzerum, Trebizond, Van and Bitlis, and to

accept his decision thereupon, as well as any stipulations he may prescribe as to access for Armenia to the sea, and as to the demilitarisation of any portion of Turkish territory adjacent to the said frontier.

ARTICLE 90.

In the event of the determination of the frontier under Article 89 involving the transfer of the whole or any part of the territory of the said Vilayets to Armenia, Turkey hereby renounces as from the date of such decision all rights and title over the territory so transferred. The provisions of the present Treaty applicable to territory detached from Turkey shall thereupon become applicable to the said territory.

The proportion and nature of the financial obligations of Turkey which Armenia will have to assume, or of the rights which will pass to her, on account of the transfer of the said territory will be determined in accordance with Articles 241 to 244, Part VIII (Financial Clauses) of the present Treaty.

Subsequent agreements will, if necessary, decide all questions which are not decided by the present Treaty and which may arise in consequence of the transfer of the said territory.

ARTICLE 91.

In the event of any portion of the territory referred to in Article 89 being transferred to Armenia, a Boundary Commission, whose composition will be determined subsequently, will be constituted within three months from the delivery of the decision referred to in the said Article to trace on the spot the frontier between Armenia and Turkey as established by such decision.

ARTICLE 92.

The frontiers between Armenia and Azerbaijan and Georgia respectively will be determined by direct agreement between the States concerned.

If in either case the States concerned have failed to determine the frontier by agreement at the date of the decision referred to in Article 89, the frontier line in question will be determined by the Principal Allied Powers, who will also provide for its being traced on the spot.

ARTICLE 93.

Armenia accepts and agrees to embody in a Treaty with the Principal Allied Powers such provisions as may be deemed necessary by these Powers to protect the interests of inhabitants of that State who differ from the majority of the population in race, language, or religion.

Armenia further accepts and agrees to embody in a Treaty with the Principal Allied Powers such provisions as these Powers may deem necessary to protect freedom of transit and equitable treatment for the commerce of other nations.

SECTION VII.—SYRIA, MESOPOTAMIA, PALESTINE.

ARTICLE 94.

The High Contracting Parties agree that Syria and Mesopotamia shall, in accordance with the fourth paragraph of Article 22, Part I (Covenant of the League of Nations), be provisionally recognised as independent States subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.

A Commission shall be constituted within fifteen days from the coming into force of the present Treaty to trace on the spot the frontier line described in Article 27, II (2) and (3). This Commission will be composed of three members nominated by France, Great Britain and Italy respectively, and one member nominated by Turkey; it will be assisted by a representative of Syria for the Syrian frontier, and by a representative of Mesopotamia for the Mesopotamian frontier.

The determination of the other frontiers of the said States, and the selection of the Mandatories, will be made by the Principal Allied Powers.

ARTICLE 95.

The High Contracting Parties agree to entrust, by application of the provisions of Article 22, the administration of Palestine, within such boundaries as may be determined by the Principal Allied Powers, to a Mandatory to be selected by the said Powers. The Mandatory will be responsible for putting into effect the declaration originally made on November 2, 1917, by the British Government, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.

The Mandatory undertakes to appoint as soon as possible a special Commission to study and regulate all questions and claims relating to the different religious communities. In the composition of this Commission the religious interests concerned will be taken into account. The Chairman of the Commission will be appointed by the Council of the League of Nations.

ARTICLE 96.

The terms of the mandates in respect of the above territories will be formulated by the Principal Allied Powers and submitted to the Council of the League of Nations for approval.

ARTICLE 97.

Turkey hereby undertakes, in accordance with the provisions of Article 132, to accept any decisions which may be taken in relation to the questions dealt with in this Section.

SECTION VIII.—HEDJAZ.

ARTICLE 98.

Turkey, in accordance with the action already taken by the Allied Powers, hereby recognises the Hedjaz as a free and independent State, and renounces in favour of the Hedjaz all rights and titles over the territories of the former Turkish Empire situated outside the frontiers of Turkey as laid down by the present Treaty, and comprised within the boundaries which may ultimately be fixed.

ARTICLE 99.

In view of the sacred character attributed by Moslems of all countries to the cities and the Holy Places of Mecca and Medina, His Majesty the King of the Hedjaz undertakes to assure free and easy access thereto to Moslems of every country who desire to go there on pilgrimage or for any other religious object, and to respect and ensure respect for the pious foundations which are or may be established there by Moslems of any countries in accordance with the precepts of the law of the Koran.

ARTICLE 100.

His Majesty the King of the Hedjaz undertakes that in commercial matters the most complete equality of treatment shall be assured in the territory of the Hedjaz to the persons, ships and goods of nationals of any of the Allied Powers, or of any of the new States set up in the territories of the former Turkish Empire, as well as to the persons, ships and goods of nationals of States, Members of the League of Nations.

SECTION IX.—EGYPT, SOUDAN, CYPRUS.

1. EGYPT.

ARTICLE 101.

Turkey renounces all rights and title in or over Egypt. This renunciation shall take effect as from November 5, 1914. Turkey declares that in conformity with the action taken by the Allied Powers she recognises the Protectorate proclaimed over Egypt by Great Britain on December 18, 1914.

ARTICLE 102.

Turkish subjects habitually resident in Egypt on December 18, 1914, will acquire Egyptian nationality *ipso facto* and will lose their Turkish nationality, except that if at that date such persons were temporarily absent from, and have not since returned to, Egypt they will not acquire Egyptian nationality without a special authorisation from the Egyptian Government.

ARTICLE 103.

Turkish subjects who became resident in Egypt after December 18, 1914, and are habitually resident there at the date of the coming into force of the present Treaty may, subject to the conditions prescribed in Article 105 for the right of option, claim Egyptian nationality, but such claim may in individual cases be refused by the competent Egyptian authority.

ARTICLE 104.

For all purposes connected with the present Treaty, Egypt and Egyptian nationals, their goods and vessels, shall be treated on the same footing, as from August 1, 1914, as the Allied Powers, their nationals, goods and vessels, and provisions in respect of territory under Turkish sovereignty, or of territory detached from Turkey in accordance with the present Treaty, shall not apply to Egypt.

ARTICLE 105.

Within a period of one year after the coming into force of the present Treaty persons over eighteen years of age acquiring Egyptian nationality under the provisions of Article 102 will be entitled to opt for Turkish nationality. In case such persons, or those who under Article 103 are entitled to claim Egyptian nationality, differ in race from the majority of the population of Egypt, they will within the same period be entitled to opt for the nationality of any State in favour of which territory is detached from Turkey, if the majority of the population of that State is of the same race as the person exercising the right to opt.

Option by a husband covers a wife, and option by parents covers their children under eighteen years of age.

Persons who have exercised the above right to opt must, except where authorised to continue to reside in Egypt, transfer within the ensuing twelve months their place of residence to the State for which they have opted. They will be entitled to retain their immovable property in Egypt, and may carry with them their movable property of every description. No export or import duties or charges may be imposed upon them in connection with the removal of such property.

ARTICLE 106.

The Egyptian Government shall have complete liberty of action in regulating the status of Turkish subjects in Egypt and the conditions under which they may establish themselves in the territory.

ARTICLE 107.

Egyptian nationals shall be entitled, when abroad, to British diplomatic and consular protection.

ARTICLE 108.

Egyptian goods entering Turkey shall enjoy the treatment accorded to British goods.

ARTICLE 109.

Turkey renounces in favour of Great Britain the powers conferred upon His Imperial Majesty the Sultan by the Convention signed at Constantinople on October 29, 1888, relating to the free navigation of the Suez Canal.

ARTICLE 110.

All property and possessions in Egypt belonging to the Turkish Government pass to the Egyptian Government without payment.

ARTICLE 111.

All movable and immovable property in Egypt belonging to Turkish nationals (who do not acquire Egyptian nationality) shall be dealt with in accordance with the provisions of Part IX (Economic Clauses) of the present Treaty.

ARTICLE 112.

Turkey renounces all claim to the tribute formerly paid by Egypt.

Great Britain undertakes to relieve Turkey of all liability in respect of the Turkish loans secured on the Egyptian tribute.

These loans are:

The guaranteed loan of 1855;

The loan of 1894 representing the converted loans of 1854 and 1871;

The loan of 1891 representing the converted loan of 1877.

The sums which the Khedives of Egypt have from time to time undertaken to pay over to the houses by which these loans were issued will be applied as heretofore to the interest and the sinking funds of the loans of 1894 and 1891 until the final extinction of those loans. The Government of Egypt will also continue to apply the sum hitherto paid towards the interest on the guaranteed loan of 1855.

Upon the extinction of these loans of 1894, 1891 and 1855, all liability on the part of the Egyptian Government arising out of the tribute formerly paid by Egypt to Turkey will cease.

2. SOUDAN

ARTICLE 113.

The High Contracting Parties declare and place on record that they have taken note of the Convention between the British Government and the Egyptian Government defining the status and regulating the administration of the Soudan, signed on January 19, 1899, as amended by the

supplementary Convention relating to the town of Suakin, signed on July 10, 1899.

ARTICLE 114.

Soudanese shall be entitled when in foreign countries to British diplomatic and consular protection.

3. CYPRUS.

ARTICLE 115.

The High Contracting Parties recognise the annexation of Cyprus proclaimed by the British Government on November 5, 1914.

ARTICLE 116.

Turkey renounces all rights and title over or relating to Cyprus, including the right to the tribute formerly paid by that island to the Sultan.

ARTICLE 117.

Turkish nationals born or habitually resident in Cyprus will acquire British nationality and lose their Turkish nationality, subject to the conditions laid down in the local law.

SECTION X.—MOROCCO, TUNIS.

ARTICLE 118.

Turkey recognises the French Protectorate in Morocco, and accepts all the consequences thereof. This recognition shall take effect as from March 30, 1912.

ARTICLE 119.

Moroccan goods entering Turkey shall be subject to the same treatment as French goods.

ARTICLE 120.

Turkey recognises the French Protectorate over Tunis and accepts all the consequences thereof. This recognition shall take effect as from May 12, 1881.

Tunisian goods entering Turkey shall be subject to the same treatment as French goods.

SECTION XI.—LIBYA, ÆGEAN ISLANDS.

ARTICLE 121.

Turkey definitely renounces all rights and privileges which under the Treaty of Lausanne of October 18, 1912, were left to the Sultan in Libya.

ARTICLE 122.

Turkey renounces in favour of Italy all rights and title over the following islands of the Ægean Sea: Stampalia (Astropalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Pscopis (Tilos), Misiros (Nisyros), Calymnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Sini (Symi), and Cos (Kos), which are now occupied by Italy, and the islets dependent thereon, and also over the island of Castellorizzo. (*See map No. 1.*)

SECTION XII.—NATIONALITY.

ARTICLE 123.

Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.

ARTICLE 124.

Persons over eighteen years of age losing their Turkish nationality and obtaining *ipso facto* a new nationality under Article 123 shall be entitled within a period of one year from the coming into force of the present Treaty to opt for Turkish nationality.

ARTICLE 125.

Persons over eighteen years of age habitually resident in territory detached from Turkey in accordance with the present Treaty and differing in race from the majority of the population of such territory shall within one year from the coming into force of the present Treaty be entitled to opt for Armenia, Azerbaijan, Georgia, Greece, the Hedjaz, Mesopotamia, Syria, Bulgaria or Turkey, if the majority of the population of the State selected is of the same race as the person exercising the right to opt.

ARTICLE 126.

Persons who have exercised the right to opt in accordance with the provisions of Articles 124 or 125 must within the succeeding twelve months transfer their place of residence to the State for which they have opted.

They will be entitled to retain their immovable property in the territory of the other State where they had their place of residence before exercising their right to opt.

They may carry with them their movable property of every description. No export or import duties may be imposed upon them in connection with the removal of such property.

ARTICLE 127.

The High Contracting Parties undertake to put no hindrance in the way of the exercise of the right which the persons concerned have under

the present Treaty, or under the Treaties of Peace concluded with Germany, Austria, Bulgaria or Hungary, or under any treaty concluded by the Allied Powers, or any of them, with Russia, or between any of the Allied Powers themselves, to choose any other nationality which may be open to them.

In particular, Turkey undertakes to facilitate by every means in her power the voluntary emigration of persons desiring to avail themselves of the right to opt provided by Article 125, and to carry out any measures which may be prescribed with this object by the Council of the League of Nations.

ARTICLE 128.

Turkey undertakes to recognise any new nationality which has been or may be acquired by her nationals under the laws of the Allied Powers or new States and in accordance with the decisions of the competent authorities of these Powers pursuant to naturalisation laws or under Treaty stipulations, and to regard such persons as having, in consequence of the acquisition of such new nationality, in all respects severed their allegiance to their country of origin.

In particular, persons who before the coming into force of the present Treaty have acquired the nationality of one of the Allied Powers in accordance with the law of such Power shall be recognised by the Turkish Government as nationals of such Power and as having lost their Turkish nationality, notwithstanding any provisions of Turkish law to the contrary. No confiscation of property or other penalty provided by Turkish law shall be incurred on account of the acquisition of any such nationality.

ARTICLE 129.

Jews of other than Turkish nationality who are habitually resident, on the coming into force of the present Treaty, within the boundaries of Palestine, as determined in accordance with Article 95, will *ipso facto* become citizens of Palestine to the exclusion of any other nationality.

ARTICLE 130.

For the purposes of the provisions of this Section, the status of a married woman will be governed by that of her husband, and the status of children under eighteen years of age by that of their parents.

ARTICLE 131.

The provisions of this Section will apply to the city of Smyrna and the territory defined in Article 66 as from the establishment of the final status of the territory in accordance with Article 83.

SECTION XIII.—GENERAL PROVISIONS.

ARTICLE 132.

Outside her frontiers as fixed by the present Treaty Turkey hereby renounces in favour of the Principal Allied Powers all rights and title which she could claim on any ground over or concerning any territories outside Europe which are not otherwise disposed of by the present Treaty.

Turkey undertakes to recognise and conform to the measures which may be taken now or in the future by the Principal Allied Powers, in agreement where necessary with third Powers, in order to carry the above stipulation into effect.

ARTICLE 133.

Turkey undertakes to recognize the full force of the Treaties of Peace and Additional Conventions concluded by the Allied Powers with the Powers who fought on the side of Turkey, and to recognise whatever dispositions have been or may be made concerning the territories of the former German Empire, of Austria, of Hungary and of Bulgaria, and to recognise the new States within their frontiers as there laid down.

ARTICLE 134.

Turkey hereby recognises and accepts the frontiers of Germany, Austria, Bulgaria, Greece, Hungary, Poland, Roumania, the Serb-Croat-Slovene State and the Czecho-Slovak State as these frontiers may be determined by the Treaties referred to in Article 133 or by any supplementary conventions.

ARTICLE 135.

Turkey undertakes to recognise the full force of all treaties or agreements which may be entered into by the Allied Powers with States now existing or coming into existence in future in the whole or part of the former Empire of Russia as it existed on August 1, 1914, and to recognise the frontiers of any such States as determined therein.

Turkey acknowledges and agrees to respect as permanent and inalienable the independence of the said States.

In accordance with the provisions of Article 259, Part VIII (Financial Clauses), and Article 277, Part IX (Economic Clauses), of the present Treaty, Turkey accepts definitely the abrogation of the Brest-Litovsk Treaties and of all treaties, conventions and agreements entered into by her with the Maximalist Government in Russia.

ARTICLE 136.

A Commission composed of four members, appointed by the British Empire, France, Italy and Japan respectively, shall be set up within three

months from the coming into force of the present Treaty, to prepare, with the assistance of technical experts representing the other capitulatory Powers, Allied or neutral, who with this object will each be invited to appoint an expert, a scheme of judicial reform to replace the present capitulatory system in judicial matters in Turkey. This Commission may recommend, after consultation with the Turkish Government, the adoption of either a mixed or an unified judicial system.

The scheme prepared by the Commission will be submitted to the Governments of the Allied and neutral Powers concerned. As soon as the Principal Allied Powers have approved the scheme they will inform the Turkish Government, which hereby agrees to accept the new system.

The Principal Allied Powers reserve the right to agree among themselves, and if necessary with the other Allied or neutral Powers concerned, as to the date on which the new system is to come into force.

ARTICLE 137.

Without prejudice to the provisions of Part VII (Penalties), no inhabitant of Turkey shall be disturbed or molested, under any pretext whatever, on account of any political or military action taken by him, or any assistance of any kind given by him to the Allied Powers, or their nationals, between August 1, 1914, and the coming into force of the present Treaty; all sentences pronounced against any inhabitant of Turkey for the above reasons shall be completely annulled, and any proceedings already instituted shall be arrested.

ARTICLE 138.

No inhabitant of territory detached from Turkey in accordance with the present Treaty shall be disturbed or molested on account of his political attitude after August 1, 1914, or of the determination of his nationality effected in accordance with the present Treaty.

ARTICLE 139.

Turkey renounces formally all rights of suzerainty or jurisdiction of any kind over Moslems who are subject to the sovereignty or protectorate of any other State.

No power shall be exercised directly or indirectly by any Turkish authority whatever in any territory detached from Turkey or of which the existing status under the present Treaty is recognised by Turkey.

PART IV.—PROTECTION OF MINORITIES.

ARTICLE 140.

Turkey undertakes that the stipulations contained in Articles 141, 145 and 147 shall be recognised as fundamental laws, and that no civil or military law or regulation, no Imperial Iradeh nor official action shall conflict

or interfere with these stipulations, nor shall any law, regulation, Imperial Iradeh nor official action prevail over them.

ARTICLE 141.

Turkey undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

All inhabitants of Turkey shall be entitled to the free exercise, whether public or private, of any creed, religion or belief.

The penalties for any interference with the free exercise of the right referred to in the preceding paragraph shall be the same whatever may be the creed concerned.

ARTICLE 142.

Whereas, in view of the terrorist régime which has existed in Turkey since November 1, 1914, conversions to Islam could not take place under normal conditions, no conversions since that date are recognised and all persons who were non-Moslems before November 1, 1914, will be considered as still remaining such, unless, after regaining their liberty, they voluntarily perform the necessary formalities for embracing the Islamic faith.

In order to repair so far as possible the wrongs inflicted on individuals in the course of the massacres perpetrated in Turkey during the war, the Turkish Government undertakes to afford all the assistance in its power or in that of the Turkish authorities in the search for and deliverance of all persons, of whatever race or religion, who have disappeared, been carried off, interned or placed in captivity since November 1, 1914.

The Turkish Government undertakes to facilitate the operations of mixed commissions appointed by the Council of the League of Nations to receive the complaints of the victims themselves, their families or their relations, to make the necessary enquiries, and to order the liberation of the persons in question.

The Turkish Government undertakes to ensure the execution of the decisions of these commissions, and to assure the security and the liberty of the persons thus restored to the full enjoyment of their rights.

ARTICLE 143.

Turkey undertakes to recognise such provisions as the Allied Powers may consider opportune with respect to the reciprocal and voluntary emigration of persons belonging to racial minorities.

Turkey renounces any right to avail herself of the provisions of Article 16 of the Convention between Greece and Bulgaria relating to reciprocal emigration, signed at Neuilly-sur-Seine on November 27, 1919. Within six months from the coming into force of the present Treaty Greece and Turkey will enter into a special arrangement relating to the reciprocal

and voluntary emigration of the populations of Turkish and Greek race in the territories transferred to Greece and remaining Turkish respectively.

In case agreement cannot be reached as to such arrangement, Greece and Turkey will be entitled to apply to the Council of the League of Nations, which will fix the terms of such arrangement.

ARTICLE 144.

The Turkish Government recognises the injustice of the law of 1915 relating to Abandoned Properties (*Emval-i-Metroukeh*), and of the supplementary provisions thereof, and declares them to be null and void, in the past as in the future.

The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their business of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1, 1914. It recognises that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found. Such property shall be restored free of all charges or servitudes with which it may have been burdened and without compensation of any kind to the present owners or occupiers, subject to any action which they may be able to bring against the persons from whom they derived title.

The Turkish Government agrees that arbitral commissions shall be appointed by the Council of the League of Nations wherever found necessary. These commissions shall each be composed of one representative of the Turkish Government, one representative of the community which claims that it or one of its members has been injured, and a chairman appointed by the Council of the League of Nations. These arbitral commissions shall hear all claims covered by this Article and decide them by summary procedure.

The arbitral commissions will have power to order:

(1) the provision by the Turkish Government of labour for any work of reconstruction or restoration deemed necessary. This labour shall be recruited from the races inhabiting the territory where the arbitral commission considers the execution of the said works to be necessary;

(2) the removal of any person who, after enquiry, shall be recognised as having taken an active part in massacres or deportations or as having provoked them; the measures to be taken with regard to such person's possessions will be indicated by the commission;

(3) the disposal of property belonging to members of a community who have died or disappeared since January 1, 1914, without leaving heirs; such property may be handed over to the community instead of to the State;

(4) the cancellation of all acts of sale or any acts creating rights over immovable property concluded after January 1, 1914. The indemnification of the holders will be a charge upon the Turkish Government, but must not serve as a pretext for delaying the restitution. The arbitral commission will however have the power to impose equitable arrangements between the interested parties, if any sum has been paid by the present holder of such property.

The Turkish Government undertakes to facilitate in the fullest possible measure the work of the commissions and to ensure the execution of their decisions, which will be final. No decision of the Turkish judicial or administrative authorities shall prevail over such decisions.

ARTICLE 145.

All Turkish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Difference of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

Within a period of two years from the coming into force of the present Treaty the Turkish Government will submit to the Allied Powers a scheme for the organisation of an electoral system based on the principle of proportional representation of racial minorities.

No restriction shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press or in publications of any kind, or at public meetings. Adequate facilities shall be given to Turkish nationals of non-Turkish speech for the use of their language, either orally or in writing, before the courts.

ARTICLE 146.

The Turkish Government undertakes to recognize the validity of diplomas granted by recognised foreign universities and schools, and to admit the holders thereof to the free exercise of the professions and industries for which such diplomas qualify.

This provision will apply equally to nationals of Allied Powers who are resident in Turkey.

ARTICLE 147.

Turkish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular they shall have an equal right to establish, manage and control at their own expense, and independently of and without interference by the Turkish authorities, any charitable, religious and social institutions, schools for primary, secondary and higher instruc-

tion and other educational establishments, with the right to use their own language and to exercise their own religion freely therein.

ARTICLE 148.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to racial, linguistic or religious minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational or charitable purposes.

The sums in question shall be paid to the qualified representatives of the communities concerned.

ARTICLE 149.

The Turkish Government undertakes to recognise and respect the ecclesiastical and scholastic autonomy of all racial minorities in Turkey. For this purpose, and subject to any provisions to the contrary in the present Treaty, the Turkish Government confirms and will uphold in their entirety the prerogatives and immunities of an ecclesiastical, scholastic or judicial nature granted by the Sultans to non-Moslem races in virtue of special orders or imperial decrees (*firman*s, *hattis*, *berats*, etc.) as well as by ministerial orders or orders of the Grand Vizier.

All laws, decrees, regulations and circulars issued by the Turkish Government and containing abrogations, restrictions or amendments of such prerogatives and immunities shall be considered to such extent null and void.

Any modification of the Turkish judicial system which may be introduced in accordance with the provisions of the present Treaty shall be held to override this Article, in so far as such modification may affect individuals belonging to racial minorities.

ARTICLE 150.

In towns and districts where there is resident a considerable proportion of Turkish nationals of the Christian or Jewish religions the Turkish Government undertakes that such Turkish nationals shall not be compelled to perform any act which constitutes a violation of their faith or religious observances, and shall not be placed under any disability by reason of their refusal to attend courts of law or to perform any legal business on their weekly day of rest. This provision, however, shall not exempt such Turkish nationals (Christians or Jews) from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order.

ARTICLE 151.

The Principal Allied Powers, in consultation with the Council of the League of Nations, will decide what measures are necessary to guarantee

the execution of the provisions of this Part. The Turkish Government hereby accepts all decisions which may be taken on this subject.

PART V.—MILITARY, NAVAL AND AIR CLAUSES.

In order to render possible the initiation of a general limitation of the armaments of all nations, Turkey undertakes strictly to observe the military, naval and air clauses which follow.

SECTION I.—MILITARY CLAUSES.

CHAPTER I.—GENERAL CLAUSES.

ARTICLE 152.

The armed force at the disposal of Turkey shall only consist of:

- (1) The Sultan's bodyguard;
- (2) Troops of gendarmerie, intended to maintain order and security in the interior and to ensure the protection of minorities;
- (3) Special elements intended for the reinforcement of the troops of gendarmerie in case of serious trouble, and eventually to ensure the control of the frontiers.

ARTICLE 153.

Within six months from the coming into force of the present Treaty, the military forces other than that provided for in Article 152 shall be demobilised and disbanded.

CHAPTER II.—EFFECTIVES, ORGANISATION AND CADRES OF THE TURKISH ARMED FORCE.

ARTICLE 154.

The Sultan's bodyguard shall consist of a Staff and infantry and cavalry units, the strength of which shall not exceed 700 officers and men. This strength is not included in the total force provided for in Article 155.

The composition of this guard is given in Table 1 annexed to this Section.

ARTICLE 155.

The total strength of the forces enumerated in paragraphs (2) and (3) of Article 152 shall not exceed 50,000 men, including Staffs, officers, training personnel and depot troops.

ARTICLE 156.

The troops of gendarmerie shall be distributed over the territory of Turkey, which for this purpose will be divided into territorial areas to be delimited as provided in Article 200.

A legion of gendarmerie, composed of mounted and unmounted troops, provided with machine guns and with administrative and medical services will be organised in each territorial region; it will supply in the vilayets, sandjaks, cazas, etc., the detachments necessary for the organisation of a fixed protective service, mobile reserves being at its disposal at one or more points within the region.

On account of their special duties, the legions shall not include either artillery or technical services.

The total strength of the legions shall not exceed 35,000 men, to be included in the total strength of the armed force provided for in Article 155.

The maximum strength of any one legion shall not exceed one quarter of the total strength of the legions.

The elements of any one legion shall not be employed outside the territory of their region, except by special authorisation from the Inter-Allied Commission provided for in Article 200.

ARTICLE 157.

The special elements for reinforcements may include details of infantry, cavalry, mountain artillery, pioneers and the corresponding technical and general services; their total strength shall not exceed 15,000 men, to be included in the total strength provided for in Article 155.

The number of such reinforcements for any one legion shall not exceed one third of the whole strength of these elements without the special authority of the Inter-Allied Commission provided for in Article 200.

The proportion of the various arms and services entering into the composition of these special elements is laid down in Table II annexed to this Section.

Their quartering will be fixed as provided in Article 200.

ARTICLE 158.

In the formations referred to in Articles 156 and 157, the proportion of officers, including the personnel of staffs and special services, shall not exceed one twentieth of the total effectives with the colours, and that of non-commissioned officers shall not exceed one twelfth of the total effectives with the colours.

ARTICLE 159.

Officers supplied by the various Allied or neutral Powers shall collaborate, under the direction of the Turkish Government, in the command, the organisation and the training of the gendarmerie. These officers shall not be included in the strength of gendarmerie officers authorised by Article 158, but their number shall not exceed fifteen per cent. of that strength. Special agreements to be drawn up by the Inter-Allied Commission mentioned in Article 200 shall fix the proportion of these officers according

to nationality, and shall determine the conditions of their participation in the various missions assigned to them by this Article.

ARTICLE 160.

In any one territorial region all officers placed at the disposal of the Turkish Government under the conditions laid down in Article 159 shall in principle be of the same nationality.

ARTICLE 161.

In the zone of the Straits and islands referred to in Article 178, excluding the islands of Lemnos, Imbros, Samothrace, Tenedos and Mitylene, the forces of gendarmerie, Greek and Turkish, will be under the Inter-Allied Command of the forces in occupation of that zone.

ARTICLE 162.

All measures of mobilization, or appertaining to mobilization, or tending to an increase of the strength or of the means of transport of any of the forces provided for in this Chapter are forbidden.

The various formations, Staffs and administrative services shall not, in any case, include supplementary cadres.

ARTICLE 163.

Within the period fixed by Article 153, all existing forces of gendarmerie shall be amalgamated with the legions provided for in Article 156.

ARTICLE 164.

The formation of any body of troops not provided for in this Section is forbidden.

The suppression of existing formations which are in excess of the authorized strength of 50,000 men (not including the Sultan's bodyguard) shall be effected progressively from the date of the signature of the present Treaty, in such manner as to be completed within six months at the latest after the coming into force of the Treaty, in accordance with the provisions of Article 153.

The number of officers, or persons in the position of officers, in the War Ministry and the Turkish General Staff, as well as in the administrations attached to them, shall, within the same period, be reduced to the establishment considered by the Commission referred to in Article 200 as strictly necessary for the good working of the general services of the armed Turkish force, this establishment being included in the maximum figure laid down in Article 158.

CHAPTER III.—RECRUITING.

ARTICLE 165.

The Turkish armed force shall in future be constituted and recruited by voluntary enlistment only.

Enlistment shall be open to all subjects of the Turkish State equally, without distinction of race or religion.

As regards the legions referred to in Article 156, their system of recruiting shall be in principle regional, and so regulated that the Moslem and non-Moslem elements of the population of each region may be, so far as possible, represented on the strength of the corresponding legion.

The provisions of the preceding paragraphs apply to officers as well as to men.

ARTICLE 166.

The length of engagement of non-commissioned officers and men shall be twelve consecutive years.

The annual replacement of men released from service for any reason whatever before the expiration of their term of engagement shall not exceed five per cent. of the total effectives fixed by Article 155.

ARTICLE 167.

All officers must be regulars (*officers de carrière*).

Officers at present serving in the army or the gendarmerie who are retained in the new armed force must undertake to serve at least up to the age of forty-five.

Officers at present serving in the army or the gendarmerie who are not admitted to the new armed force shall be definitely released from all military obligations, and must not take part in any military exercises, theoretical or practical.

Officers newly-appointed must undertake to serve on the active list for at least twenty-five consecutive years.

The annual replacement of officers leaving the service for any cause before the expiration of their term of engagement shall not exceed five per cent. of the total effectives of officers provided by Article 158.

CHAPTER IV.—SCHOOLS, EDUCATIONAL ESTABLISHMENTS, MILITARY CLUBS
AND SOCIETIES.

ARTICLE 168.

On the expiration of three months from the coming into force of the present Treaty there must only exist in Turkey the number of military schools which is absolutely indispensable for the recruitment of officers and non-commissioned officers of the units allowed, i.e.:

1 school for officers;

1 school per territorial region for non-commissioned officers.

The number of students admitted to instruction in these schools shall be strictly in proportion to the vacancies to be filled in the cadres of officers and non-commissioned officers.

ARTICLE 169.

Educational establishments, other than those referred to in Article 168, as well as all sporting or other societies, must not occupy themselves with any military matters.

CHAPTER V.—CUSTOMS OFFICIALS, LOCAL, URBAN AND RURAL POLICE, FOREST GUARDS.

ARTICLE 170.

Without prejudice to the provisions of Article 48, Part III (Political Clauses), the number of customs officials, local urban or rural police, forest guards or other like officials shall not exceed the number of men employed in a similar capacity in 1913 within the territorial limits of Turkey as fixed by the present Treaty.

The number of these officials may only be increased in the future in proportion to the increase of population in the localities or municipalities which employ them.

These employees and officials, as well as those employed in the railway service, must not be assembled for the purpose of taking part in any military exercises.

In each administrative district the local urban and rural police and forest guards shall be recruited and officered according to the principles laid down in the case of the gendarmerie by Article 165.

In the Turkish police, which, as forming part of the civil administration of Turkey, will remain distinct from the Turkish armed force, officers or officials supplied by the various Allied or neutral Powers shall collaborate, under the direction of the Turkish Government, in the organisation, the command and the training of the said police. The number of these officers or officials shall not exceed fifteen per cent. of the strength of similar Turkish officers or officials.

CHAPTER VI.—ARMAMENT, MUNITIONS AND MATERIAL.

ARTICLE 171.

On the expiration of six months from the coming into force of the present Treaty, the armament which may be in use or held in reserve for replacement in the various formations of the Turkish armed force shall

not exceed the figures fixed per thousand men in Table III annexed to this Section.

ARTICLE 172.

The stock of munitions at the disposal of Turkey shall not exceed the amounts fixed in Table III annexed to this Section.

ARTICLE 173.

Within six months from the coming into force of the present Treaty all existing arms, munitions of the various categories and war material in excess of the quantities authorised shall be handed over to the Military Inter-Allied Commission of Control provided for in Article 200 in such places as shall be appointed by this Commission.

The Principal Allied Powers will decide what is to be done with this material.

ARTICLE 174.

The manufacture of arms, munitions and war material, including aircraft and parts of aircraft of every description, shall take place only in the factories or establishments authorised by the Inter-Allied Commission referred to in Article 200.

Within six months from the coming into force of the present Treaty all other establishments for the manufacture, preparation, storage or design of arms, munitions or any war material shall be abolished or converted to purely commercial uses.

The same will apply to all arsenals other than those utilised as depots for the authorised stocks of munitions.

The plant of establishments or arsenals in excess of that required for the authorised manufacture shall be rendered useless or converted to purely commercial uses, in accordance with the decisions of the Military Inter-Allied Commission of Control referred to in Article 200.

ARTICLE 175.

The importation into Turkey of arms, munitions and war materials, including aircraft and parts of aircraft of every description, is strictly forbidden, except with the special authority of the Inter-Allied Commission referred to in Article 200.

The manufacture for foreign countries and the exportation of arms, munitions and war material of any description is also forbidden.

ARTICLE 176.

The use of flame-throwers, asphyxiating, poisonous or other gases and all similar liquids, materials or processes being forbidden, their manufacture and importation are strictly forbidden in Turkey.

Material specially intended for the manufacture, storage or use of the said products or processes is equally forbidden.

The manufacture and importation into Turkey of armoured cars, tanks or any other similar machines suitable for use in war are equally forbidden.

CHAPTER VII.—FORTIFICATIONS.

ARTICLE 177.

In the zone of the Straits and islands referred to in Article 178 the fortifications will be disarmed and demolished as provided in that Article.

Outside this zone, and subject to the provisions of Article 89, the existing fortified works may be preserved in their present condition, but will be disarmed within the same period of three months.

CHAPTER VIII.—MAINTENANCE OF THE FREEDOM OF THE STRAITS.

ARTICLE 178.

For the purpose of guaranteeing the freedom of the Straits, the High Contracting Parties agree to the following provisions:—

(1) Within three months from the coming into force of the present Treaty, all works, fortifications and batteries within the zone defined in Article 179 and comprising the coast and islands of the Sea of Marmora and the coast of the Straits, also those in the Islands of Lemnos, Imbros, Samothrace, Tenedos and Mitylene, shall be disarmed and demolished.

The reconstruction of these works and the construction of similar works are forbidden in the above zone and islands. France, Great Britain and Italy shall have the right to prepare for demolition any existing roads and railways in the said zone and in the islands of Lemnos, Imbros, Samothrace, and Tenedos which allow of the rapid transport of mobile batteries, the construction there of such roads and railways remaining forbidden.

In the islands of Lemnos, Imbros, Samothrace and Tenedos the construction of new roads or railways must not be undertaken except with the authority of the three Powers mentioned above.

(2) The measures prescribed in the first paragraph of (1) shall be executed by and at the expense of Greece and Turkey as regards their respective territories, and under control as provided in Article 203.

(3) The territories of the zone and the islands of Lemnos, Imbros, Samothrace, Tenedos, and Mitylene shall not be used for military purposes, except by the three Allied Powers referred to above, acting in concert. This provision does not exclude the employment in the said zone and islands of forces of Greek and Turkish gendarmerie, who will be under the Inter-Allied command of the forces of occupation, in accordance with the provisions of Article 161, nor the maintenance of a garrison of Greek troops in the island of Mitylene, nor the presence of the Sultan's body-guard referred to in Article 152.

(4) The said Powers, acting in concert, shall have the right to maintain in the said territories and islands such military and air forces as

they may consider necessary to prevent any action being taken or prepared which might directly or indirectly prejudice the freedom of the Straits.

This supervision will be carried out in naval matters by a guard-ship belonging to each of the said Allied Powers.

The forces of occupation referred to above may, in case of necessity, exercise on land the right of requisition, subject to the same conditions as those laid down in the Regulations annexed to the Fourth Hague Convention, 1907, or any other Convention replacing it to which all the said Powers are parties. Requisitions shall, however, only be made against payment on the spot.

ARTICLE 179.

The zone referred to in Article 178 is defined as follows (*see* map No. 1) :

(1) *In Europe:*

From Karachali on the Gulf of Xeros northeastwards,
a line reaching and then following the southern boundary of the basin of the Beylik Dere to the crest of the Kuru Dag;

then following that crest line,

then a straight line passing north of Emerli, and south of Derelar,

then curving north-north-eastwards and cutting the road from Rodosto to Malgara 3 kilometres west of Ainarjik and then passing 6 kilometres southeast of Ortaja Keui,

then curving north-eastwards and cutting the road from Rodosto to Hairobolu 18 kilometres northwest of Rodosto,

then to a point on the road from Muradli to Rodosto about 1 kilometre south of Muradli,

a straight line;

thence east-north-eastwards to Yeni Keui,

a straight line, modified however so as to pass at a minimum distance of 2 kilometres north of the railway from Chorlu to Chatalja;

thence north-north-eastwards to a point west of Istranja, situated on the frontier of Turkey in Europe as defined in Article 27, I (2),

a straight line leaving the village of Yeni Keui within the zone;

thence to the Black Sea,

the frontier of Turkey in Europe as defined in Article 27, I (2).

(2) *In Asia:*

From a point to be determined by the Principal Allied Powers between Cape Dahlina and Kemer Iskele on the gulf of Adramid east-north-eastwards,

a line passing south of Kemer Iskele and Kemer together with the road joining these places;

then to a point immediately south of the point where the Decauville railway from Osmanlar to Urchanlar crosses the Diermen Dere,

a straight line;

thence north-eastwards to Manias Geul,
a line following the right bank of the Diermen Dere, and Kara Dere
Suyu;
thence eastwards, the southern shore of Manias Geul;
then to the point where it is crossed by the railway from Panderma to
Susighirli,
the course of the Kara Dere upstream;
thence eastwards to a point on the Adranos Chai about 3 kilometres
from its mouth near Kara Oghlan,
a straight line;
thence eastwards, the course of this river downstream;
then the southern shore of Abulliont Geul;
then to the point where the railway from Mudania to Brusa crosses
the Ulfer Chai, about 5 kilometres northwest of Brusa,
a straight line;
thence north-eastwards to the confluence of the rivers about 6 kilo-
metres north of Brusa,
the course of the Ulfer Chai downstream;
thence eastwards to the southernmost point of Iznik Geul,
a straight line;
thence to a point 2 kilometres north of Iznik,
the southern and eastern shores of this lake;
thence north-eastwards to the westernmost point of Sbanaja Geul,
a line following the crest line Chirchir Chesme, Sira Dag, Elmali
Dag, Kalpak Dag, Ayu Tepe, Hekim Tepe;
thence northwards to a point on the road from Ismid to Armasha, 8
kilometres southwest of Armasha,
a line following as far as possible the eastern boundary of the basin
of the Chojali Dere;
thence to a point on the Black Sea, 2 kilometres east of the mouth
of the Akabad R,
a straight line.

ARTICLE 180.

A Commission shall be constituted within fifteen days from the coming into force of the present Treaty to trace on the spot the boundaries of the zone referred to in Article 178, except in so far as these boundaries coincide with the frontier line described in Article 27, I (2). This Commission shall be composed of three members nominated by the military authorities of France, Great Britain and Italy respectively, with, for the portion of the zone placed under Greek sovereignty, one member nominated by the Greek Government, and, for the portion of the zone remaining under Turkish sovereignty, one member nominated by the Turkish Government. The decisions of the Commission, which will be taken by a majority, shall be binding on the parties concerned.

The expenses of this Commission will be included in the expenses of the occupation of the said zone.

TABLE I.—COMPOSITION OF THE SULTAN'S BODYGUARD.

Units.	Maximum strength.	Remarks.
Staff	100 ⁽¹⁾	(1) Included in this establishment are: (a) The staff of the Sultan's Bodyguard; (b) General officers, officers of all ranks and all arms, as well as military officials attached to the Sultan's military household.
Infantry	425	
Cavalry	125	
Administrative services	50	
Total	700	

TABLE II.—STRENGTH OF THE VARIOUS ARMS AND SERVICES ENTERING INTO THE COMPOSITION OF THE SPECIAL ELEMENTS FOR REINFORCEMENT.

Units.	Maximum Establishment.
Staff (Command, officers, and personnel)	100
Infantry	8,200
Artillery	2,500
Cavalry	700
Pioneers and technical troops	2,000
Technical and general services	1,500
Total	15,000

TABLE III.—MAXIMUM AUTHORISED ARMAMENTS AND MUNITION SUPPLIES.

Material	Quantity for 1,000 men ¹			Quantity of Ammunition per Weapon (rifle or gun)		
	Sultan's Body-guard	Legions	Special elements for reinforcement	Sultan's Body-guard	Legions	Special elements for reinforcement
Rifles or carbines ²	1,150	1,150	1,150	1,000	1,000	1,000
Revolvers	{ 1 revolver per officer and per mounted non-commissioned officer }			100 rounds per revolver		
Machine guns, heavy or light	15	10	15	50,000	100,000	100,000
Mountain guns ³	—	—	5 ⁴	—	—	1,500

¹ Including increase for replacement. ² Automatic rifles and carbines are counted as light machine guns. ³ No field gun or heavy gun is authorised. ⁴ One battery of 4 guns + 1 spare gun, a total of 15 batteries.

SECTION II.—NAVAL CLAUSES.

ARTICLE 181.

From the coming into force of the present Treaty all warships interned in Turkish ports in accordance with the Armistice of October 30, 1918, are declared to be finally surrendered to the Principal Allied Powers.

Turkey will, however, retain the right to maintain along her coasts, for police and fishery duties, a number of vessels which shall not exceed

7 sloops,

6 torpedo boats.

These vessels will constitute the Turkish Marine, and will be chosen by the Naval Inter-Allied Commission of Control referred to in Article 201 from amongst the following vessels:

SLOOPS:

Aidan Reis.
Burack Reis.
Sakiz.
Prevesah.
Hizir Reis.
Kemal Reis.
Issa Reis.

TORPEDO-BOATS:

Sivri Hissar.
Sultan Hissar.
Drach.
Moussoul.
Ack Hissar.
Younnous.

The authority established for the control of customs will be entitled to appeal to the three Allied Powers referred to in Article 178 in order to obtain a more considerable force, if such an increase is considered indispensable for the satisfactory working of the services concerned.

Sloops may carry a light armament of two guns inferior to 77 m/m. and two machine guns. Torpedo-boats (or patrol launches) may carry a light armament of one gun inferior to 77 m/m. All the torpedoes and torpedo-tubes on board will be removed.

ARTICLE 182.

Turkey is forbidden to construct or acquire any warships other than those intended to replace the units referred to in Article 181. Torpedo-boats shall be replaced by patrol launches.

The vessels intended for replacement purposes shall not exceed:

600 tons in the case of sloops;

100 tons in the case of patrol launches.

Except where a ship has been lost, sloops and torpedo-boats shall only be replaced after a period of twenty years, counting from the launching of the ship.

ARTICLE 183.

The Turkish armed transports and fleet auxiliaries enumerated below shall be disarmed and treated as merchant ships:

Rechid Pasha (late *Port Antonio*).

Tir-i-Mujghian (late *Pembroke Castle*).

Kiresund (late *Warwick Castle*).

Millet (late *Seagull*).

Akdeniz.

Bosphorus ferry-boats Nos. 60, 61, 63 and 70.

ARTICLE 184.

All warships, including submarines, now under construction in Turkey shall be broken up, with the exception of such surface vessels as can be completed for commercial purposes.

The work of breaking up these vessels shall be commenced on the coming into force of the present Treaty.

ARTICLE 185.

Articles, machinery and material arising from the breaking up of Turkish warships of all kinds, whether surface vessels or submarines, may not be used except for purely industrial or commercial purposes. They may not be sold or disposed of to foreign countries.

ARTICLE 186.

The construction or acquisition of any submarine, even for commercial purposes, shall be forbidden in Turkey.

ARTICLE 187.

The vessels of the Turkish Marine enumerated in Article 181 must have on board or in reserve only the allowance of war material and armaments fixed by the Naval Inter-Allied Commission of Control referred to in Article 201. Within a month from the time when the above quantities are fixed all armaments, munitions or other naval war material, including mines and torpedoes, belonging to Turkey at the time of the signing of the Armistice of October 30, 1918, must be definitely surrendered to the Principal Allied Powers.

The manufacture of these articles in Turkish territory for, and their export to, foreign countries shall be forbidden.

All other stocks, depots or reserves of arms, munitions or naval war material of all kinds are forbidden.

ARTICLE 188.

The Naval Inter-Allied Commission of Control will fix the number of officers and men of all grades and corps to be admitted, in accordance with the provisions of Article 189, into the Turkish Marine. This number will include the personnel for manning the ships left to Turkey in accordance with Article 181, and the administrative personnel of the police and fisheries protection services and of the semaphore stations.

Within two months from the time when the above number is fixed, the personnel of the former Turkish Navy in excess of this number shall be demobilised.

No naval or military corps or reserve force in connection with the Turkish Marine may be organised in Turkey without being included in the above strength.

ARTICLE 189.

The personnel of the Turkish Marine shall be recruited entirely by voluntary engagements entered into for a minimum period of twenty-five

consecutive years for officers, and twelve consecutive years for petty officers and men.

The number engaged to replace those discharged for any reason other than the expiration of their term of service must not exceed five per cent. per annum of the total personnel fixed by the Naval Inter-Allied Commission of Control.

The personnel discharged from the former Turkish Navy must not receive any kind of naval or military training.

Officers belonging to the former Turkish Navy and not demobilised must undertake to serve till the age of forty-five, unless discharged for sufficient reason.

Officers and men belonging to the Turkish mercantile marine must not receive any kind of naval or military training.

ARTICLE 190.

On the coming into force of the present Treaty all the wireless stations in the zone referred to in Article 178 shall be handed over to the Principal Allied Powers. Greece and Turkey shall not construct any wireless stations in the said zone.

SECTION III.—AIR CLAUSES.

ARTICLE 191.

The Turkish armed forces must not include any military or naval air forces.

No dirigible shall be kept.

ARTICLE 192.

Within two months from the coming into force of the present Treaty the personnel of the air forces on the rolls of the Turkish land and sea forces shall be demobilised.

ARTICLE 193.

Until the complete evacuation of Turkish territory by the Allied troops, the aircraft of the Allied Powers shall have throughout Turkish territory freedom of passage through the air, freedom of transit and of landing.

ARTICLE 194.

During the six months following the coming into force of the present Treaty the manufacture, importation and exportation of aircraft of every kind, parts of aircraft, engines for aircraft and parts of engines for aircraft shall be forbidden in all Turkish territory.

ARTICLE 195.

On the coming into force of the present Treaty all military and naval aeronautical material must be delivered by Turkey, at her own expense, to the Principal Allied Powers.

Delivery must be completed within six months and must be effected at such places as may be appointed by the Aeronautical Inter-Allied Commission of Control. The Governments of the Principal Allied Powers will decide as to the disposal of this material.

In particular, this material will include all items under the following heads which are or have been in use or were designed for warlike purposes.

Complete aeroplanes and seaplanes, as well as those being manufactured, repaired or assembled.

Dirigibles able to take the air, being manufactured, repaired or assembled.

Plant for the manufacture of hydrogen.

Dirigible sheds and shelters of every kind for aircraft.

Pending their delivery, dirigibles will, at the expense of Turkey, be maintained inflated with hydrogen; the plant for the manufacture of hydrogen, as well as the sheds for dirigibles, may, at the discretion of the said Powers, be left to Turkey until the dirigibles are handed over.

Engines for aircraft.

Nacelles and fuselages.

Armament (guns, machine-guns, light machine-guns, bomb-dropping apparatus, torpedo-dropping apparatus, synchronising apparatus, aiming apparatus).

Munitions (cartridges, shells, bombs loaded or unloaded, stocks of explosives or of material for their manufacture).

Instruments for use on aircraft.

Wireless apparatus and photographic and cinematographic apparatus for use on aircraft.

Component parts of any of the items under the preceding heads.

All aeronautical material of whatsoever description in Turkey shall be considered *prima facie* as war material, and as such may not be exported, transferred, lent, used or destroyed, but must remain on the spot until such time as the Aeronautical Inter-Allied Commission of Control referred to in Article 202 has given a decision as to its nature; this Commission will be exclusively entitled to decide all such points.

SECTION IV.—INTER-ALLIED COMMISSIONS OF CONTROL AND ORGANIZATION.

ARTICLE 196.

Subject to any special provisions in this Part, the military, naval and air clauses contained in the present Treaty shall be executed by Turkey and at her expense under the control of Inter-Allied Commissions appointed for this purpose by the Principal Allied Powers.

The above-mentioned Commissions will represent the Principal Allied Powers in dealing with the Turkish Government in all matters relating to the execution of the military, naval or air clauses. They will com-

municate to the Turkish authorities the decisions which the Principal Allied Powers have reserved the right to take, or which the execution of the said clauses may necessitate.

ARTICLE 197.

The Inter-Allied Commissions of Control and Organization may establish their organisations at Constantinople, and will be entitled, as often as they think desirable, to proceed to any point whatever in Turkish territory, or to send sub-commissions, or to authorise one or more of their members to go, to any such point.

ARTICLE 198.

The Turkish Government must furnish to the Inter-Allied Commissions of Control and Organization all such information and documents as the latter may deem necessary for the accomplishment of their mission, and must supply at its own expense all labour and material which the said Commissions may require in order to ensure the complete execution of the military, naval or air clauses.

The Turkish Government shall attach a qualified representative to each Commission for the purpose of receiving all communications which the Commission may have to address to the Turkish Government, and of supplying or procuring for the Commission all information or documents which may be required.

ARTICLE 199.

The upkeep and cost of the Inter-Allied Commissions of Control and Organization and the expenses incurred by their work shall be borne by Turkey.

ARTICLE 200.

The Military Inter-Allied Commission of Control and Organization will be entrusted on the one hand with the supervision of the execution of the military clauses relating to the reduction of the Turkish forces within the authorised limits, the delivery of arms and war material prescribed in Chapter VI of Section I, and the disarmament of the fortified regions prescribed in Chapters VII and VIII of that Section, and on the other hand with the organization and the control of the employment of the new Turkish armed force.

(1) As the Military Inter-Allied Commission of Control it will be its special duty:

(a) to fix the number of customs officials, local urban and rural police, forest guards and other like officials which Turkey will be authorized to maintain in accordance with Article 170;

(b) to receive from the Turkish Government the notifications relating to the location of the stocks and depots of munitions, the armament of the

fortified works, fortresses and forts, the situation of the works or factories for the production of arms, munitions and war material and their operations;

(c) to take delivery of the arms, munitions, war material and plant intended for manufacture of the same, to select the points where such delivery is to be effected, and to supervise the works of rendering things useless and of conversion provided for by the present Treaty.

(2) As the Military Inter-Allied Commission of Organization it will be its special duty:

(a) to proceed, in collaboration with the Turkish Government, with the organization of the Turkish armed force upon the basis laid down in Chapters I to IV, Section I of this Part, with the delimitation of the territorial regions provided for in Article 156, and with the distribution of the troops of gendarmerie and the special elements for reinforcement between the different territorial regions;

(b) to control the conditions for the employment, as laid down in Articles 156 and 157, of these troops of gendarmerie and these elements, and to decide what effect shall be given to requests of the Turkish Government for the provisional modification of the normal distribution of these forces determined in conformity with the said Articles;

(c) to determine the proportion by nationality of the Allied and neutral officers to be engaged to serve in the Turkish gendarmerie under the conditions laid down in Article 159, and to lay down the conditions under which they are to participate in the different duties provided for them in the said Article.

ARTICLE 201.

It will be the special duty of the Naval Inter-Allied Commission of Control to visit the building yards and to supervise the breaking-up of the ships, to take delivery of the arms, munitions and naval war material and to supervise their destruction and breaking up.

The Turkish Government must furnish to the Naval Inter-Allied Commission of Control all such information and documents as the latter may deem necessary to ensure the complete execution of the naval clauses, in particular the designs of the warships, the composition of their armaments, the details and models of the guns, munitions, torpedoes, mines, explosives, wireless telegraphic apparatus and in general everything relating to naval war material, as well as all legislative or administrative documents and regulations.

ARTICLE 202.

It will be the special duty of the Aeronautical Inter-Allied Commission of Control to make an inventory of the aeronautical material now in the hands of the Turkish Government, to inspect aeroplane, balloon and motor manufactories and factories producing arms, munitions and explosives

capable of being used by aircraft, to visit all aerodromes, sheds, landing grounds, parks and depots on Turkish territory, to arrange, if necessary, for the removal of material and to take delivery of such material.

The Turkish Government must furnish to the Aeronautical Inter-Allied Commission of Control all such information and legislative, administrative or other documents as the Commission may consider necessary to ensure the complete execution of the air clauses, and in particular a list of the personnel belonging to all the Turkish air services and of the existing material as well as of that in process of manufacture or on order, and a complete list of all establishments working for aviation, of their positions, and of all sheds and landing grounds.

ARTICLE 203.

The Military, Naval and Aeronautical Inter-Allied Commissions of Control will appoint representatives who will be jointly responsible for controlling the execution of the operations provided for in paragraphs (1) and (2) of Article 178.

ARTICLE 204.

Pending the definitive settlement of the political status of the territories referred to in Article 89, the decisions of the Inter-Allied Commissions of Control and Organisation will be subject to any modifications which the said Commissions may consider necessary in consequence of such settlement.

ARTICLE 205.

The Naval and Aeronautical Inter-Allied Commissions of Control will cease to operate on the completion of the tasks assigned to them respectively by Articles 201 and 202.

The same will apply to the section of the Military Inter-Allied Commission entrusted with the functions of control prescribed in Article 200 (1).

The section of the said Commission entrusted with the organisation of the new Turkish armed force as provided in Article 200 (2) will operate for five years from the coming into force of the present Treaty. The Principal Allied Powers reserve the right to decide, at the end of this period, whether it is desirable to maintain or suppress this section of the said Commission.

SECTION V.—GENERAL PROVISIONS.

ARTICLE 206.

The following portions of the Armistice of October 30, 1918: Articles 7, 10, 12, 13 and 24 remain in force so far as they are not inconsistent with the provisions of the present Treaty.

ARTICLE 207.

Turkey undertakes from the coming into force of the present Treaty not to accredit to any foreign country any military, naval or air mission, and not to send or allow the departure of such mission; she undertakes moreover to take the necessary steps to prevent Turkish nationals from leaving her territory in order to enlist in the army, fleet or air service of any foreign Power, or to be attached thereto with the purpose of helping in its training, or generally to give any assistance to the military, naval or air instruction in a foreign country.

The Allied Powers undertake on their part that from the coming into force of the present Treaty they will neither enlist in their armies, fleets or air services nor attach to them any Turkish national with the object of helping in military training, or in general employ any Turkish national as a military, naval or air instructor.

The present provision does not, however, affect the right of France to recruit for the Foreign Legion in accordance with the French military laws and regulations.

PART VI.—PRISONERS OF WAR AND GRAVES.

SECTION I.—PRISONERS OF WAR.

ARTICLE 208.

The repatriation of Turkish prisoners of war and interned civilians who have not already been repatriated shall continue as quickly as possible after the coming into force of the present Treaty.

ARTICLE 209.

From the time of their delivery into the hands of the Turkish authorities, the prisoners of war and interned civilians are to be returned without delay to their homes by the said authorities.

Those among them who, before the war, were habitually resident in territory occupied by the troops of the Allied Powers are likewise to be sent to their homes, subject to the consent and control of the military authorities of the Allied armies of occupation.

ARTICLE 210.

The whole cost of repatriation from October 30, 1918, shall be borne by the Turkish Government.

ARTICLE 211.

Prisoners of war and interned civilians awaiting disposal or undergoing sentence for offences against discipline shall be repatriated irrespective of the completion of their sentence or of the proceedings pending against them.

This stipulation shall not apply to prisoners of war and interned civilians punished for offences committed subsequent to June 15, 1920.

During the period pending their repatriation, all prisoners of war and interned civilians shall remain subject to the existing regulations, more especially as regards work and discipline.

ARTICLE 212.

Prisoners of war and interned civilians who are awaiting trial or undergoing sentence for offences other than those against discipline may be detained.

ARTICLE 213.

The Turkish Government undertakes to admit to its territory without distinction all persons liable to repatriation.

Prisoners of war or Turkish nationals who do not desire to be repatriated may be excluded from repatriation; but the Allied Governments reserve to themselves the right either to repatriate them or to take them to a neutral country or to allow them to reside in their own territories.

The Turkish Government undertakes not to institute any exceptional proceedings against these persons or their families nor to take any repressive or vexatious measures of any kind whatsoever against them on this account.

ARTICLE 214.

The Allied Governments reserve the right to make the repatriation of Turkish prisoners of war or Turkish nationals in their hands conditional upon the immediate notification and release by the Turkish Government of any prisoners of war and other nationals of the Allied Powers who are still held in Turkey against their will.

ARTICLE 215.

The Turkish Government undertakes:

(1) to give every facility to Commissions entrusted by the Allied Powers with the search for the missing or the identification of Allied nationals who have expressed their desire to remain in Turkish territory; to furnish such Commissions with all necessary means of transport; to allow them access to camps, prisons, hospitals and all other places; and to place at their disposal all documents whether public or private which would facilitate their enquiries;

(2) to impose penalties upon any Turkish officials or private persons who have concealed the presence of any nationals of any of the Allied Powers, or who have neglected to reveal the presence of any such after it had come to their knowledge;

(3) to facilitate the establishing of criminal acts punishable by the penalties referred to in Part VII (Penalties) of the present Treaty and committed by Turks against the persons of prisoners of war or Allied nationals during the war.

ARTICLE 216.

The Turkish Government undertakes to restore without delay from the date of the coming into force of the present Treaty all articles, equipment, arms, money, securities, documents and personal effects of every description which have belonged to officers, soldiers or sailors or other nationals of the Allied Powers and which have been retained by the Turkish authorities.

ARTICLE 217.

The High Contracting Parties waive reciprocally all repayment of sums due for the maintenance of prisoners of war in their respective territories.

SECTION II.—GRAVES.

ARTICLE 218.

The Turkish Government shall transfer to the British, French and Italian Governments respectively full and exclusive rights of ownership over the land within the boundaries of Turkey as fixed by the present Treaty in which are situated the graves of their soldiers and sailors who fell in action or died from wounds, accident or disease, as well as over the land required for laying out cemeteries or erecting memorials to these soldiers and sailors, or providing means of access to such cemeteries or memorials.

The Greek Government undertakes to fulfil the same obligation so far as concerns the portion of the zone of the Straits and the islands placed under its sovereignty.

ARTICLE 219.

Within six months from the coming into force of the present Treaty the British, French and Italian Governments will respectively notify to the Turkish Government and the Greek Government the land of which the ownership is to be transferred to them in accordance with Article 218. The British, French and Italian Governments will each have the right to appoint a Commission, which shall be exclusively entitled to examine the areas where burials have or may have taken place, and to make suggestions with regard to the re-grouping of graves and the sites where cemeteries are eventually to be established. The Turkish Government and the Greek Government may be represented on these Commissions, and shall give them all assistance in carrying out their mission.

The said land will include in particular the land in the Gallipoli Peninsula shown on map No. 3; the limits of this land will be notified to the Greek Government as provided in the preceding paragraph. The Government in whose favour the transfer is made undertakes not to employ the land, nor to allow it to be employed, for any purpose other than that to which it is dedicated. The shore may not be employed for any military, marine or commercial purpose.

ARTICLE 220.

Any necessary legislative or administrative measures for the transfer to the British, French and Italian Governments respectively of full and exclusive rights of ownership over the land notified in accordance with Article 219 shall be taken by the Turkish Government and the Greek Government respectively within six months from the date of such notification. If any compulsory acquisition of the land is necessary it will be effected by, and at the cost of, the Turkish Government or the Greek Government, as the case may be.

ARTICLE 221.

The British, French and Italian Governments may respectively entrust to such Commission or organisation as each of them may deem fit the establishment, arrangement, maintenance and care of the cemeteries, memorials and graves situated in the land referred to in Article 218.

These Commissions or organisations shall be officially recognised by the Turkish Government and the Greek Government respectively. They shall have the right to undertake any exhumations or removal of bodies which they may consider necessary in order to concentrate the graves and establish cemeteries; the remains of soldiers or sailors may not be exhumed, on any pretext whatever, without the authority of the Commission or organisation of the Government concerned.

ARTICLE 222.

The land referred to in this Section shall not be subjected by Turkey or the Turkish authorities, or by Greece or the Greek authorities, as the case may be, to any form of taxation. Representatives of the British, French or Italian Governments, as well as persons desirous of visiting the cemeteries, memorials and graves, shall at all times have free access thereto. The Turkish Government and the Greek Government respectively undertake to maintain in perpetuity the roads leading to the said land.

The Turkish Government and the Greek Government respectively undertake to afford to the British, French and Italian Governments all necessary facilities for obtaining a sufficient water supply for the requirements of the staff engaged in the maintenance or protection of the said cemeteries or memorials, and for the irrigation of the land.

ARTICLE 223.

The provisions of this Section do not affect the Turkish or Greek sovereignty, as the case may be, over the land transferred. The Turkish Government and the Greek Government respectively shall take all the necessary measures to ensure the punishment of persons subject to their

jurisdiction who may be guilty of any violation of the rights conferred on the Allied Governments, or of any desecration of the cemeteries, memorials or graves.

ARTICLE 224.

Without prejudice to the other provisions of this Section, the Allied Governments and the Turkish Government will cause to be respected and maintained the graves of soldiers and sailors buried in their respective territories, including any territories for which they may hold a mandate in conformity with the Covenant of the League of Nations.

ARTICLE 225.

The graves of prisoners of war and interned civilians who are nationals of the different belligerent States and have died in captivity shall be properly maintained in accordance with Article 224.

The Allied Governments on the one hand and the Turkish Government on the other reciprocally undertake also to furnish to each other:

- (1) a complete list of those who have died, together with all information useful for identification;
- (2) all information as to the number and position of the graves of all those who have been buried without identification.

PART VII.—PENALTIES.

ARTICLE 226.

The Turkish Government recognises the right of the Allied Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Turkey or in the territory of her allies.

The Turkish Government shall hand over to the Allied Powers or to such one of them as shall so request all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the Turkish authorities.

ARTICLE 227.

Persons guilty of criminal acts against the nationals of one of the Allied Powers shall be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied Powers shall be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused shall be entitled to name his own counsel.

ARTICLE 228.

The Turkish Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the prosecution of offenders and the just appreciation of responsibility.

ARTICLE 229.

The provisions of Articles 226 to 228 apply similarly to the Governments of the States to which territory belonging to the former Turkish Empire has been or may be assigned, in so far as concerns persons accused of having committed acts contrary to the laws and customs of war who are in the territory or at the disposal of such States.

If the persons in question have acquired the nationality of one of the said States, the Government of such State undertakes to take, at the request of the Power concerned and in agreement with it, or upon the joint request of all the Allied Powers, all the measures necessary to ensure the prosecution and punishment of such persons.

ARTICLE 230.

The Turkish Government undertakes to hand over to the Allied Powers the persons whose surrender may be required by the latter as being responsible for the massacres committed during the continuance of the state of war on territory which formed part of the Turkish Empire on August 1, 1914.

The Allied Powers reserve to themselves the right to designate the tribunal which shall try the persons so accused, and the Turkish Government undertakes to recognise such tribunal.

In the event of the League of Nations having created in sufficient time a tribunal competent to deal with the said massacres, the Allied Powers reserve to themselves the right to bring the accused persons mentioned above before such tribunal, and the Turkish Government undertakes equally to recognise such tribunal.

The provisions of Article 228 apply to the cases dealt with in this Article.

PART VIII.—FINANCIAL CLAUSES.

ARTICLE 231.

Turkey recognises that by joining in the war of aggression which Germany and Austria-Hungary waged against the Allied Powers she has caused to the latter losses and sacrifices of all kinds for which she ought to make complete reparation.

On the other hand, the Allied Powers recognise that the resources of Turkey are not sufficient to enable her to make complete reparation.

In these circumstances, and inasmuch as the territorial rearrangements resulting from the present Treaty will leave to Turkey only a portion of the revenues of the former Turkish Empire, all claims against the Turkish Government for reparation are waived by the Allied Powers, subject only to the provisions of this Part and of Part IX (Economic Clauses) of the present Treaty.

The Allied Powers, desiring to afford some measure of relief and assistance to Turkey, agree with the Turkish Government that a Financial Commission shall be appointed consisting of one representative of each of the following Allied Powers who are specially interested, France, the British Empire and Italy, with whom there shall be associated a Turkish Commissioner in a consultative capacity. The powers and duties of this Commission are set forth in the following Articles.

ARTICLE 232.

The Financial Commission shall take such steps as in its judgment are best adapted to conserve and increase the resources of Turkey.

The Budget to be presented annually by the Minister of Finance to the Turkish Parliament shall be submitted, in the first instance, to the Financial Commission, and shall be presented to Parliament in the form approved by that Commission. No modification introduced by Parliament shall be operative without the approval of the Financial Commission.

The Financial Commission shall supervise the execution of the Budget and the financial laws and regulations of Turkey. This supervision shall be exercised through the medium of the Turkish Inspectorate of Finance, which shall be placed under the direct orders of the Financial Commission, and whose members will only be appointed with the approval of the Commission.

The Turkish Government undertakes to furnish to this Inspectorate all facilities necessary for the fulfilment of its task, and to take such action against unsuitable officials in the Financial Departments of the Government as the Financial Commission may suggest.

ARTICLE 233.

The Financial Commission shall, in addition, in agreement with the Council of the Ottoman Public Debt and the Imperial Ottoman Bank, undertake by such means as may be recognised to be opportune and equitable the regulation and improvement of the Turkish currency.

ARTICLE 234.

The Turkish Government undertakes not to contract any internal or external loan without the consent of the Financial Commission.

ARTICLE 235.

The Turkish Government engages to pay, in accordance with the provisions of the present Treaty, for all loss or damage, as defined in Article 236, suffered by civilian nationals of the Allied Powers, in respect of their persons or property, through the action or negligence of the Turkish authorities during the war and up to the coming into force of the present Treaty.

The Turkish Government will be bound to make to the European Commission of the Danube such restitutions, reparations and indemnities as may be fixed by the Financial Commission in respect of damages inflicted on the said European Commission of the Danube during the war.

ARTICLE 236.

All the resources of Turkey, except revenues conceded or hypothecated to the service of the Ottoman Public Debt (*see* Annex 1), shall be placed at the disposal of the Financial Commission, which shall employ them, as need arises, in the following manner:

(i) The first charge (after payment of the salaries and current expenses of the Financial Commission, and of the ordinary expenses of such Allied forces of occupation as may be maintained after the coming into force of the present Treaty in territories remaining Turkish) shall be the expenses of the Allied forces of occupation since October 30, 1918, in territory remaining Turkish, and the expenses of Allied forces of occupation in territories detached from Turkey in favour of a Power other than the Power which has borne the expenses of occupation.

The amount of these expenses and of the annuities by which they shall be discharged will be determined by the Financial Commission, which will so arrange the annuities as to enable Turkey to meet any deficiency that may arise in the sums required to pay that part of the interest on the Ottoman Public Debt for which Turkey remains responsible in accordance with this Part.

(ii) The second charge shall be the indemnity which the Turkish Government is to pay, in accordance with Article 235, on account of the claims of the Allied Powers for loss or damage suffered in respect of their persons or property by their nationals (other than those who were Turkish nationals on August 1, 1914), as defined in Article 317, Part IX (Economic Clauses), through the action or negligence of the Turkish authorities during the war, due regard being had to the financial condition of Turkey and the necessity for providing for the essential expenses of its administration. The Financial Commission shall adjudicate on and provide for payment of all claims in respect of personal damage. The claims in respect to property shall be investigated, determined and paid in accordance with Article 287, Part IX (Economic Clauses). The Financial Commission

shall fix the annuity to be applied to the settlement of claims in respect of persons as well as in respect of property, should the funds at the disposal of the Allied Powers in accordance with the said Article 237, be insufficient to meet this charge, and shall determine the currency in which the annuity shall be paid.

ARTICLE 237.

Any hypothecation of Turkish revenues effected during the war in respect of obligations (including the internal debt) contracted by the Turkish Government during the war is hereby annulled.

ARTICLE 238.

Turkey recognises the transfer to the Allied Powers of any claims to payment or repayment which Germany, Austria, Bulgaria or Hungary may have against her, in accordance with Article 261 of the Treaty of Peace concluded at Versailles on June 28, 1919, with Germany, and the corresponding Articles of the Treaties of Peace with Austria, Bulgaria and Hungary. The Allied Powers agree not to require from Turkey any payment in respect of claims so transferred.

ARTICLE 239.

No new concession shall be granted by the Turkish Government either to a Turkish subject or otherwise without the consent of the Financial Commission.

ARTICLE 240.

States in whose favour territory is detached from Turkey shall acquire without payment all property and possessions situated therein registered in the name of the Turkish Empire or of the Civil List.

ARTICLE 241.

States in whose favour territory has been detached from Turkey, either as a result of the Balkan Wars in 1913, or under the present Treaty, shall participate in the annual charge for the service of the Ottoman Public Debt contracted before November 1, 1914.

The Governments of the States of the Balkan Peninsula and the newly-created States in Asia in favour of whom such territory has been or is detached from Turkey shall give adequate guarantees for the payment of the share of the above annual charge allotted to them respectively.

ARTICLE 242.

For the purposes of this Part, the Ottoman Public Debt shall be deemed to consist of the Debt heretofore governed by the Decree of Mouharrem, together with such other loans as are enumerated in Annex I to this Part.

Loans contracted before November 1, 1914, will be taken into account in the distribution of the Ottoman Public Debt between Turkey, the States of the Balkan Peninsula and the new States set up in Asia.

This distribution shall be effected in the following manner:

(1) Annuities arising from loans prior to October 17, 1912 (Balkan Wars), shall be distributed between Turkey and the Balkan States, including Albania, which receive or have received any Turkish territory;

(2) The residue of the annuities for which Turkey remains liable after this distribution, together with those arising from loans contracted by Turkey between October 17, 1912, and November 1, 1914, shall be distributed between Turkey and the States in whose favour territory is detached from Turkey under the present Treaty.

ARTICLE 243.

The general principle to be adopted in determining the amount of the annuity to be paid by each State will be as follows:

The amounts shall bear the same ratio to the total required for the service of the Debt as the average revenue of the transferred territory bore to the average revenue of the whole of Turkey (including in each case the yield of the Customs surtax imposed in the year 1907) over the three financial years 1909-10, 1910-11, and 1911-12.

ARTICLE 244.

The Financial Commission shall, as soon as possible after the coming into force of the present Treaty, determine in accordance with the principle laid down in Article 243 the amount of the annuities referred to in that Article, and communicate its decisions in this respect to the High Contracting Parties.

The Financial Commission shall fulfil the functions provided for in Article 134 of the Treaty of Peace concluded with Bulgaria on November 27, 1919.

ARTICLE 245.

The annuities assessed in the manner above provided will be payable as from the date of the coming into force of the Treaties by which the respective territories were detached from Turkey, and, in the case of territories detached under the present Treaty, from March 1, 1920; they shall continue to be payable (except as provided by Article 252) until the final liquidation of the Debt. They shall, however, be proportionately reduced as the loans constituting the Debt are successively extinguished.

ARTICLE 246.

The Turkish Government transfers to the Financial Commission all its rights under the provisions of the Decree of Mouharrem and subsequent Decrees.

The Council of the Ottoman Public Debt shall consist of the British, French and Italian delegates, and of the representative of the Imperial Ottoman Bank, and shall continue to operate as heretofore. It shall administer and levy all revenues conceded to it under the Decree of Mouharrem and all other revenues the management of which has been entrusted to it in accordance with any other loan contracts previous to November 1, 1914.

The Allied Powers authorise the Council to give administrative assistance to the Turkish Ministry of Finance, under such conditions as may be determined by the Financial Commission with the object of realising as far as possible the following programme:

The system of direct levy of certain revenues by the existing Administration of the Ottoman Public Debt shall, within limits to be prescribed by the Financial Commission, be extended as widely as possible and applied throughout the provinces remaining Turkish. On each new creation of revenue or of indirect taxes approved by the Financial Commission, the Commission shall consider the possibility of entrusting the administration thereof to the Council of the Debt for the account of the Turkish Government.

The administration of the Customs shall be under a Director-General appointed by and revocable by the Financial Commission and answerable to it. No change in the schedule of the Customs charges shall be made except with the approval of the Financial Commission.

The Governments of France, Great Britain and Italy will decide, by a majority and after consulting the bondholders, whether the Council should be maintained or replaced by the Financial Commission on the expiry of the present term of the Council. The decision of the Governments shall be taken at least six months before the date corresponding to the expiry of this period.

ARTICLE 247.

The Commission has authority to propose, at a later date, the substitution for the pledges at present granted to bondholders, in accordance with their contracts or existing decrees, of other adequate pledges, or of a charge on the general revenues of Turkey. The Allied Governments undertake to consider any proposals the Financial Commission might then have to make on this subject.

ARTICLE 248.

All property, movable and immovable, belonging to the Administration of the Ottoman Public Debt, wherever situate, shall remain integrally at the disposal of that body.

The Council of the Debt shall have power to apply the value of any realised property for the purpose of extraordinary amortisation either of the Unified Debt or of the Lots Tures.

ARTICLE 249.

The Turkish Government agrees to transfer to the Financial Commission all its rights in the Reserve Funds and the Tripoli Indemnity Fund.

ARTICLE 250.

A sum equal to the arrears of any revenues heretofore affected to the service of the Ottoman Public Debt within the territories remaining Turkish, which should have been but have not been paid to the Council of the Debt, shall (except where such territories have been in the military occupation of Allied forces and for the time of such occupation) be paid to the Council of the Debt by the Turkish Government as soon as in the opinion of the Financial Commission the financial condition of Turkey shall permit.

ARTICLE 251.

The Council of the Debt shall review all the transactions of the Council which have taken place during the war. Any disbursements made by the Council which were not in accordance with its powers and duties, as defined by the Decree of Mouharrem or otherwise before the war, shall be reimbursed to the Council of the Debt by the Turkish Government so soon as in the opinion of the Financial Commission such payment is possible. The Council shall have power to review any action on the part of the Council during the war, and to annul any obligation which in its opinion is prejudicial to the interests of the bondholders, and which was not in accordance with the powers of the Council of the Debt.

ARTICLE 252.

Any of the States which under the present Treaty are to contribute to the annual charge for the service of the Ottoman Public Debt may, upon giving six months' notice to the Council of the Debt, redeem such obligation by payment of a sum representing the value of such annuity capitalised at such rate of interest as may be agreed between the State concerned and the Council of the Debt. The Council of the Debt shall not have power to require such redemption.

ARTICLE 253.

The sums in gold to be transferred by Germany and Austria under the provisions of Article 259 (1), (2), (4) and (7) of the Treaty of Peace with Germany, and under Article 210 (1) of the Treaty of Peace with Austria, shall be placed at the disposal of the Financial Commission.

ARTICLE 254.

The sums to be transferred by Germany in accordance with Article 259 (3) of the Treaty of Peace with Germany shall be placed forthwith at the disposal of the Council of the Debt.

ARTICLE 255.

The Turkish Government undertakes to accept any decision that may be taken by the Allied Powers, in agreement when necessary with other Powers, regarding the funds of the Ottoman Sanitary Administration and the former Superior Council of Health, and in respect of the claim of the Superior Council of Health against the Turkish Government, as well as regarding the funds of the Lifeboat Service of the Black Sea and Bosphorus.

The Allied Powers hereby give authority to the Financial Commission to represent them in this matter.

ARTICLE 256.

The Turkish Government, in agreement with the Allied Powers, hereby releases the German Government from the obligation incurred by it during the war to accept Turkish Government currency notes at a specified rate of exchange in payment for goods to be exported to Turkey from Germany after the war.

ARTICLE 257.

As soon as the claims of the Allied Powers against the Turkish Government as laid down in this Part have been satisfied, and the Ottoman pre-war Public Debt has been liquidated, the Financial Commission shall determine. The Turkish Government shall then consider in consultation with the Council of the League of Nations whether any further administrative advice and assistance should in the interests of Turkey be provided for the Turkish Government by the Powers, Members of the League of Nations, and, if so, in what form such advice and assistance shall be given.

ARTICLE 258.

(1) Turkey will deliver, in a seaworthy condition and in such ports of the Allied Powers as the Governments of the said Powers may determine, all German ships transferred to the Turkish flag since August 1, 1914; these ships will be handed over to the Reparation Commission referred to in Article 233 of the Treaty of Peace with Germany, any transfer to a neutral flag during the war being regarded in this respect as void so far as concerns the Allied Powers.

(2) The Turkish Government will hand over at the same time as the ships referred to in paragraph (1) all papers and documents which the Reparation Commission referred to in the said paragraph may think necessary in order to ensure the complete transfer of the property in the vessels, free and quit of all liens, mortgages, encumbrances, charges or claims, whatever their nature.

The Turkish Government will effect any re-purchase or indemnization which may be necessary. It will be the party responsible in the event of

any proceedings for the recovery of, or in any claims against, the vessel to be handed over whatever their nature, the Turkish Government being bound in every case to guarantee the Reparation Commission referred to in paragraph (1) against any ejection or proceedings upon any ground whatever arising under this head.

ARTICLE 259.

Without prejudice to Article 277, Part IX (Economic Clauses) of the present Treaty, Turkey renounces so far as she is concerned the benefit of any provisions of the Treaties of Brest-Litovsk and Bucharest or of the Treaties supplementary thereto.

Turkey undertakes to transfer either to Roumania or to the Principal Allied Powers, as the case may be, all monetary instruments, specie, securities and negotiable instruments or goods which she has received under the aforesaid Treaties.

ARTICLE 260.

The legislative measures required in order to give effect to the provisions of this Part will be enacted by the Turkish Government and by the Powers concerned within a period which must not exceed six months from the signature of the present Treaty.

ANNEX I.—THE OTTOMAN PRE-WAR PUBLIC DEBT. (NOVEMBER 5, 1914.)

Loan	Date of Contract	Interest	Sinking Fund	Original Nominal Capital	Capital outstanding on November 5, 1914 *	Annuity required for service (including com-mission)	Period of Amortisation.	Bank of Issue.
1	2	3	4	5	6	7	8	9
Unified debt	1903	4	.4644	£. T. gold 42,275,772	£. T. gold 36,799,840	£. T. gold 1,887,375	"	—
Lots tures	1870	"	"	15,632,548	10,666,975	270,000	"	—
Osmanî	18/30 April 1890	4	1	4,999,500	2,952,400	249,975	1931	Imperial Ottoman Bank.
5 per cent. 1896	29 Feb./12 Mar. 1893.	.50	.50	3,272,720	2,814,020	180,450	1946	Imperial Ottoman Bank.
4 per cent. 1903 Fish-eries.	3 Oct. 1888. 21 Feb./6 Mar. 1903.	4	.50	2,640,000	2,439,228	119,097	1958	Deutsche Bank.
Bagdad, Series I.	20 Feb./5 Mar. 1903.	4	.087538	2,376,000	2,342,252	97,120	2001	Deutsche Bank.
4 per cent. 1904	4/17 Sept. 1903.	4	.50	2,750,000	2,594,064	124,059	1960	Imperial Ottoman Bank.
4 per cent. 1901-5	21 Nov./4 Dec. 1901; 6/19 Nov. 1903; 25 April /8 May 1905.	4	.50	5,306,664	4,976,422	239,397	1961	Imperial Ottoman Bank.
Tedjizat-Askerî	4/17 April 1905.	4	.50	2,640,000	2,441,340	119,087	1961	Deutsche Bank.
Bagdad, Series II.	20 May/2 June 1908.	4	.087538	4,762,000	4,718,120	200,500	2006	Deutsche Bank.
Bagdad, Series III.	20 May/2 June 1908.	4	.087538	5,236,000	5,221,700	220,550	2010	Deutsche Bank.
4 per cent. 1908	6/19 Sept. 1908.	4	.50	4,711,124	4,538,908	212,000	1965	Imperial Ottoman Bank.
5 per cent. 1914	13/26 April 1914	5	.50	22,000,000	22,000,000	1,213,025	"	Imperial Ottoman Bank.
Docks, Arsenal, and Naval Construction.	1913	5½	1½	1,485,000	1,485,000	88,550	1943	National Bank of Turkey.
Tombac Priority	26 April/8 May 1893.	4	1	1,000,000	604,510	50,250	1934	Imperial Ottoman Bank.
Forty millions of francs (Oriental Railways).	1/13 Mar. 1894.	4	.35	1,760,000	1,567,192	76,751	1957	Deutsche Bank and its group, including the Imperial Ottoman Bank.
Customs 1902	17/29 May 1886; 28 Sept./11 Oct. 1902.	4	.50	8,600,020	7,923,234	387,976	1958	Imperial Ottoman Bank.

* The figures of the capital outstanding on Nov. 5, 1914, will be replaced at the date of the coming into force of the present Treaty by the figures of the capital remaining outstanding at that date.

4 per cent. 1909.....	30 Sept./13 Oct. 1909.	4	1	7,000,004	6,550,698	350,864	1950	Imperial Ottoman Bank.
City of Constantinople	3/16 Nov. 1909...	5	.50	1,100,000	1,073,490	60,651	1958	National Bank of Turkey.
Municipal 1909.								
City of Constantinople	1913	5	.50	1,100,000	1,094,500	60,500	"	Banque Périer et Cie.
Municipal 1913.								
Hodeïda-Sanaa	1911... 24 Feb./9 Mar. 1911.	4	.098738	1,000,010	1,000,010	40,988	2006	Banque Française.
Soma-Panderna	1910... 20 Nov./3 Dec. 1910.	4	.16715	1,712,304	1,700,644	71,532	1992	Imperial Ottoman Bank.
4 per cent. Customs	27 Oct./9 Nov. 1910.	4	1	7,040,000	6,699,880	352,440	1952	Deutsche Bank.
City of Bagdad Municipi-	1912	6	14.285	33,000	26,070	6,000	—	National Bank of Turkey.
pal.								
Treasury Bonds of the	1912	6	33.333	2,724,893	1,063,664	1,000,003	1915	Imperial Ottoman Bank.
Imperial Ottoman								
Bank 1912.								
Treasury Bonds, Périer	1913	5	.20	4,400,000	*4,400,000	1,100,000	1918	Banque Périer et Cie.
and Co.								
Treasury Bonds, 5 per	1911	5	"	1,778,587	1,778,587	125,058	—	National Bank of Turkey.
cent. 1911 (purchase								
of warships).								
Advance by the Tobacco		"	"	1,700,000	890,039	110,000	—	—
Régie.		"	"	818,970	818,970	50,006	1932	Deutsche Bank. (Anato-
Plain of Koniah irriga-		"	"					lian Railway Co.).
tion.								
TOTAL.....				161,845,116	143,241,757			

* A sum of £. T. 833,147 has been realised upon the security for these Bonds.

NOTE EXPLANATORY OF ANNEX I.

The figures in columns 5, 6 and 7 are £. T. gold.

Turkey now possesses a paper currency in place of a pre-war gold currency. At present rates of exchange the £. T. paper no longer represents the pre-war ratio of the £. T. gold to the currency in which the loans were subscribed, and in which the interest and the amortisation payments have to be paid in Europe according to the contract terms of the loans. (See Article 1 of the "Décret-Annexe" of September, 1903, and Loan Contracts, *passim*.)

The definition of £. T. gold in these columns does not signify that the provisions for the coupons and sinking funds are to be made in gold, but that the figure in £. T. has to be calculated according to such rate of exchange as will enable the bondholder to be paid in the currency to which he is entitled.

ANNEX II.

1.

The Commission shall establish its own rules and procedure.

The Chairmanship shall be held annually by the French, British and Italian Delegates in turn.

Each member shall have the right to nominate a deputy to act for him in his absence.

Decisions shall be taken by the vote of the majority. Abstention from voting will be treated as a vote against the proposal under discussion.

The Commission shall appoint such agents and employees as it may deem necessary for its work, with such emoluments and conditions of service as it may think fit.

The costs and expenses of the Commission shall be paid by Turkey, in conformity with the provisions of Article 236 (i).

The salaries of the members of the Commission, as well as those of its officials, shall be fixed on a reasonable scale by agreement from time to time between the Governments represented on the Commission.

The members of the Commission shall enjoy the same rights and immunities as are enjoyed in Turkey by duly accredited diplomatic agents of friendly Powers.

2.

Turkey undertakes to grant to the members, officials and agents of the Commission full powers to visit and inspect at all reasonable times any place, public works, or undertakings in Turkey, and to furnish to the said Commission all records, documents and information which it may require.

3.

The Commission shall be entitled to assume, in agreement with the Turkish Government and independently of any default of the latter in fulfilling its obligations, the control, management and collection of all indirect taxes.

4.

No member of the Commission shall be responsible, except to the Government appointing him, for any action or omission in the performance of his duties. No one of the Allied Governments assumes any responsibility in respect of any other Government.

5.

The Commission shall publish annually detailed reports on its work, its methods and its proposals for the financial reorganisation of Turkey, as well as regarding its accounts for the period.

6.

The Commission shall also take over any other duties which may be assigned to it under the present Treaty or with the assent of the Turkish Government.

PART IX.—ECONOMIC CLAUSES.

SECTION I.—COMMERCIAL RELATIONS.

ARTICLE 261.

The capitulatory régime resulting from treaties, conventions or usage shall be re-established in favour of the Allied Powers which directly or indirectly enjoyed the benefit thereof before August 1, 1914, and shall be extended to the Allied Powers which did not enjoy the benefit thereof on that date.

ARTICLE 262.

The Allied Powers who had post-offices in the former Turkish Empire before August 1, 1914, will be entitled to re-establish post-offices in Turkey.

ARTICLE 263.

The Convention of April 25, 1907, so far as it relates to the rate of import duties in Turkey, shall be re-established in force in favour of all the Allied Powers.

Nevertheless the Financial Commission established in accordance with Article 231, Part VIII (Financial Clauses) of the present Treaty may at any time authorise a modification of these import duties, or the imposition of consumption duties, provided that any duties so modified or imposed shall be applied equally to goods of whatever ownership or origin.

No modification of existing duties or imposition of new duties authorised by the Financial Commission by virtue of this Article shall take effect until after a period of six months from its notification to all the Allied Powers. During this period the Commission shall consider any observations relative thereto which may be formulated by any Allied Power.

ARTICLE 264.

Subject to any rights and exemptions resulting from concession contracts made before August 1, 1914, the Financial Commission shall be entitled to authorise the application by Turkey, in the conditions of equality laid down in Article 263, to the persons or property of the nationals of the Allied Powers of any taxes or duties which shall similarly be imposed on Turkish subjects in the interests of the economic stability and good government of Turkey.

The Financial Commission shall also be entitled to authorise the appli-

cation, in the same interests and in the same conditions, to the nationals of the Allied Powers of any prohibitions on import or export.

No such tax, duty or prohibition shall take effect until after a period of six months from its notification to all the Allied Powers. During this period the Commission shall consider any observations relative thereto that may be formulated by any Allied Power.

ARTICLE 265.

In the case of vessels of the Allied Powers all classes of certificates or documents relating to the vessel which were recognised as valid by Turkey before the war, or which may hereafter be recognised as valid by the principal maritime States, shall be recognised by Turkey as valid and as equivalent to the corresponding certificates issued to Turkish vessels.

A similar recognition shall be accorded to the certificates and documents issued to their vessels by the Governments of new States, whether they have a sea-coast or not, provided that such certificates and documents shall be issued in conformity with the general practice observed in the principal maritime States.

The High Contracting Parties agree to recognise the flag flown by the vessels of an Allied Power or a new State having no sea-coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels.

ARTICLE 266.

Turkey undertakes to adopt all the necessary legislative and administrative measures to protect goods the produce or manufacture of any one of the Allied Powers or new States from all forms of unfair competition in commercial transactions.

Turkey undertakes to prohibit and repress by seizure and by other appropriate remedies the importation, exportation, manufacture, distribution, sale or offering for sale in her territory of all goods bearing upon themselves or their usual get-up or wrappings any marks, names, devices or descriptions whatsoever which are calculated to convey directly or indirectly a false indication of the origin, type, nature or special characteristics of such goods.

ARTICLE 267.

Turkey undertakes, on condition that reciprocity is accorded in these matters, to respect any law, or any administrative or judicial decision given in conformity with such law, in force in any Allied State or new State and duly communicated to her by the proper authorities, defining or regulating the right to any regional appellation in respect of wine or spirits produced in the State to which the region belongs, or the conditions under which the use of any such appellation may be permitted; and the

importation, exportation, manufacture, distribution, sale or offering for sale of products or articles bearing regional appellations inconsistent with such law or order shall be prohibited by Turkey and repressed by the measures prescribed in Article 266.

ARTICLE 268.

If the Turkish Government engages in international trade, it shall not in respect thereof have or be deemed to have any rights, privileges or immunities of sovereignty.

SECTION II.—TREATIES.

ARTICLE 269.

From the coming into force of the present Treaty and subject to the provisions thereof the multilateral treaties, conventions and agreements of an economic or technical character enumerated below and in the subsequent Articles shall alone be applied as between Turkey and those of the Allied Powers party thereto:

(1) Conventions of March 14, 1884, of December 1, 1886, and of March 23, 1887, and Final Protocol of July 7, 1887, regarding the protection of submarine cables.

(2) Convention of July 5, 1890, regarding the publication of customs tariffs and the organisation of an International Union for the publication of customs tariffs.

(3) Arrangement of December 9, 1907, regarding the creation of an International Office of Public Hygiene at Paris.

(4) Convention of June 7, 1905, regarding the creation of an International Agricultural Institute at Rome.

(5) Convention of June 27, 1855, relating to the Turkish Loan.

(6) Convention of July 16, 1863, for the redemption of the toll dues on the Scheldt.

(7) Convention of October 29, 1888, regarding the establishment of a definite arrangement guaranteeing the free use of the Suez Canal.

ARTICLE 270.

From the coming into force of the present Treaty, the High Contracting Parties shall apply the conventions and agreements hereinafter mentioned, in so far as concerns them, on condition that the special stipulations contained in this Article are fulfilled by Turkey.

Postal Conventions.

Conventions and Agreements of the Universal Postal Union concluded at Vienna on July 4, 1891.

Conventions and Agreements of the Postal Union signed at Washington on June 15, 1897.

Conventions and Agreements of the Postal Union signed at Rome on May 26, 1906.

Telegraphic Conventions.

International Telegraphic Conventions signed at St. Petersburg on July 10/22, 1875.

Regulations and Tariffs drawn up by the International Telegraphic Conference, Lisbon, June 11, 1908.

Turkey undertakes not to refuse her consent to the conclusion by new States of the special arrangements referred to in the Conventions and Agreements relating to the Universal Postal Union and to the International Telegraphic Union, to which the said new States have adhered or may adhere.

ARTICLE 271.

From the coming into force of the present Treaty the High Contracting Parties shall apply, in so far as concerns them, the International Radio-Telegraphic Convention of July 5, 1912, on condition that Turkey fulfils the provisional regulations which will be indicated to her by the Allied Powers.

If within five years after the coming into force of the present Treaty a new convention regulating international radio-telegraphic communications should have been concluded to take the place of the Convention of July 5, 1912, this new convention shall bind Turkey, even if Turkey should refuse either to take part in drawing up the convention or to subscribe thereto.

This new convention will likewise replace the provisional regulations in force.

ARTICLE 272.

Turkey undertakes:

(1) within a period of twelve months from the coming into force of the present Treaty to adhere in the prescribed form to the International Convention of Paris of March 20, 1883, for the protection of industrial property, revised at Washington on June 2, 1911, and the International Convention of Berne of September 9, 1886, for the protection of literary and artistic works, revised at Berlin on November 13, 1908, and the Additional Protocol of Berne of March 20, 1914, relating to the protection of literary and artistic works:

(2) within the same period, to recognise and protect by effective legislation, in accordance with the principles of the said Conventions, the industrial, literary and artistic property of nationals of the Allied States or of any new State.

In addition, and independently of the obligations mentioned above,

Turkey undertakes to continue to assure such recognition and such protection to all the industrial, literary and artistic property of the nationals of each of the Allied States and of any new State to an extent at least as great as upon August 1, 1914, and upon the same conditions.

ARTICLE 273.

Turkey undertakes to adhere to the conventions and arrangements hereinafter mentioned, or to ratify them:

(1) Convention of October 11, 1909, regarding the international circulation of motor cars.

(2) Agreement of May 15, 1886, regarding the sealing of railway trucks subject to customs inspection, and Protocol of May 18, 1907.

(3) Convention of December 31, 1913, regarding the unification of commercial statistics.

(4) Convention of September 23, 1910, respecting the unification of certain regulations regarding collisions and salvage at sea.

(5) Convention of December 21, 1904, regarding the exemption of hospital ships from dues and charges in ports.

(6) Conventions of May 18, 1904, and of May 4, 1910, regarding the suppression of the White Slave Traffic.

(7) Convention of May 4, 1910, regarding the suppression of obscene publications.

(8) Sanitary Conventions of January 30, 1892, April 15, 1893, April 3, 1894, March 19, 1897, and December 3, 1903.

(9) Convention of November 29, 1906, regarding the unification of pharmacopœial formulæ for potent drugs.

(10) Conventions of November 3, 1881, and April 15, 1889, regarding precautionary measures against phylloxera.

(11) Convention of March 19, 1902, regarding the protection of birds useful to agriculture.

ARTICLE 274.

Each of the Allied Powers, being guided by the general principles or special provisions of the present Treaty, shall notify to Turkey the bilateral treaties or conventions which such Allied Power wishes to revive with Turkey.

The notification referred to in this Article shall be made either directly or through the intermediary of another Power. Receipt thereof shall be acknowledged in writing by Turkey. The date of the revival shall be that of the notification.

The Allied Powers undertake among themselves not to revive with Turkey any conventions or treaties which are not in accordance with the terms of the present Treaty.

The notification shall mention any provisions of the said conventions

and treaties which, not being in accordance with the terms of the present Treaty, shall not be considered as revived.

In case of any difference of opinion, the League of Nations will be called on to decide.

A period of six months from the coming into force of the present Treaty is allowed to the Allied Powers within which to make the notification.

Only those bilateral treaties and conventions which have been the subject of such a notification shall be revived between the Allied Powers and Turkey; all the others are and shall remain abrogated.

The above regulations apply to all bilateral treaties or conventions existing between all the Allied Powers and Turkey, even if the said Allied Powers have not been in a state of war with Turkey.

The provisions of this Article do not prejudice the stipulations of Article 261.

ARTICLE 275.

Turkey recognises that all the treaties, conventions or agreements which she has concluded with Germany, Austria, Bulgaria or Hungary since August 1, 1914, until the coming into force of the present Treaty are and remain abrogated by the present Treaty.

ARTICLE 276.

Turkey undertakes to secure to the Allied Powers, and to the officials and nationals of the said Powers, the enjoyment of all the rights and advantages of any kind which she may have granted to Germany, Austria, Bulgaria or Hungary, or to the officials and nationals of these States by treaties, conventions or arrangements concluded before August 1, 1914, so long as those treaties, conventions or arrangements remain in force.

The Allied Powers reserve the right to accept or not the enjoyment of these rights and advantages.

ARTICLE 277.

Turkey recognises that all treaties, conventions or arrangements which she concluded with Russia, or with any State or Government of which the territory previously formed a part of Russia, before August 1, 1914, or after that date until the coming into force of the present Treaty, or with Roumania after August 15, 1916, until the coming into force of the present Treaty, are and remain abrogated.

ARTICLE 278.

Should an Allied Power, Russia, or a State or Government of which the territory formerly constituted a part of Russia, have been forced since August 1, 1914, by reason of military occupation or by any other means or for any other cause, to grant or to allow to be granted by the act of any public authority, concessions, privileges and favours of any kind to

Turkey or to a Turkish national, such concessions, privileges and favours are *ipso facto* annulled by the present Treaty.

No claims or indemnities which may result from this annulment shall be charged against the Allied Powers or the Powers, States, Governments or public authorities which are released from their engagements by this Article.

ARTICLE 279.

From the coming into force of the present Treaty, Turkey undertakes to give the Allied Powers and their nationals the benefit *ipso facto* of the rights and advantages of any kind which she has granted by treaties, conventions or arrangements to non-belligerent States or their nationals since August 1, 1914, until the coming into force of the present Treaty, so long as those treaties, conventions or arrangements remain in force.

ARTICLE 280.

Those of the High Contracting Parties who have not yet signed, or who have signed but not yet ratified, the Opium Convention signed at The Hague on January 23, 1912, agree to bring the said Convention into force, and for this purpose to enact the necessary legislation without delay and in any case within a period of twelve months from the coming into force of the present Treaty.

Furthermore, they agree that ratification of the present Treaty should in the case of Powers which have not yet ratified the Opium Convention be deemed in all respects equivalent to the ratification of that Convention and to the signature of the Special Protocol which was opened at The Hague in accordance with the resolutions adopted by the Third Opium Conference in 1914 for bringing the said Convention into force.

For this purpose the Government of the French Republic will communicate to the Government of the Netherlands a certified copy of the Protocol of the deposit of ratifications of the present Treaty, and will invite the Government of the Netherlands to accept and deposit the said certified copy as if it were a deposit of ratifications of the Opium Convention and a signature of the Additional Protocol of 1914.

SECTION III.—INDUSTRIAL PROPERTY.

ARTICLE 281.

Subject to the stipulations of the present Treaty, rights of industrial, literary and artistic property, as such property is defined by the International Conventions of Paris and of Berne mentioned in Article 272, shall be re-established or restored, as from the coming into force of the present Treaty, in the territories of the High Contracting Parties, in favour of the persons entitled to the benefit of them at the moment when the state

of war commenced, or their legal representatives. Equally, rights which, except for the war, would have been acquired during the war in consequence of an application made for the protection of industrial property, or the publication of a literary or artistic work, shall be recognised and established in favour of those persons who would have been entitled thereto, from the coming into force of the present Treaty.

Nevertheless, all acts done by virtue of the special measures taken during the war under legislative, executive or administrative authority of any Allied Power in regard to the rights of Turkish nationals in industrial, literary or artistic property shall remain in force and shall continue to maintain their full effect.

No claim shall be made or action brought by Turkey or Turkish nationals in respect of the use during the war by the Government of any Allied Power, or by any person acting on behalf or with the assent of such Government, of any rights in industrial, literary or artistic property, nor in respect of the sale, offering for sale or use of any products, articles or apparatus whatsoever to which such rights applied.

Unless the legislation of any one of the Allied Powers in force at the moment of the signature of the present Treaty otherwise directs, sums due or paid in virtue of any act or operation resulting from the execution of the special measures mentioned in the second paragraph of this Article shall be dealt with in the same way as other sums due to Turkish nationals are directed to be dealt with by the present Treaty; and sums produced by any special measures taken by the Turkish Government in respect of rights in industrial, literary or artistic property belonging to the nationals of the Allied Powers shall be considered and treated in the same way as other debts due from Turkish nationals.

Each of the Allied Powers reserves to itself the right to impose such limitations, conditions or restrictions on rights of industrial, literary or artistic property (with the exception of trade-marks) acquired before or during the war, or which may be subsequently acquired in accordance with its legislation, by Turkish nationals, whether by granting licences, or by the working, or by preserving control over their exploitation, or in any other way, as may be considered necessary for national defence, or in the public interest, or for assuring the fair treatment by Turkey of the rights of industrial, literary and artistic property held in Turkish territory by its nationals, or for securing the due fulfilment of all the obligations undertaken by Turkey in the present Treaty. As regards rights of industrial, literary and artistic property acquired after the coming into force of the present Treaty, the right so reserved by the Allied Powers shall only be exercised in cases where these limitations, conditions or restrictions may be considered necessary for national defence or in the public interest.

In the event of the application of the provisions of the preceding paragraph by any Allied Power, there shall be paid reasonable indemnities or

royalties, which shall be dealt with in the same way as other sums due to Turkish nationals are directed to be dealt with by the present Treaty.

Each of the Allied Powers reserves the right to treat as void and of no effect any transfer in whole or in part of or other dealing with rights of or in respect of industrial, literary or artistic property effected after August 1, 1914, or in the future, which would have the result of defeating the objects of the provisions of this Article.

The provisions of this Article shall not apply to rights in industrial, literary or artistic property which have been dealt with in the liquidation of businesses or companies under war legislation by the Allied Powers, or which may be so dealt with by virtue of Article 289.

ARTICLE 282.

A minimum of one year after the coming into force of the present Treaty shall be accorded to the nationals of the High Contracting Parties, without extension fees or other penalty, in order to enable such persons to accomplish any act, fulfil any formality, pay any fees, and generally satisfy any obligation prescribed by the laws or regulations of the respective States relating to the obtaining, preserving or opposing rights to, or in respect of, industrial property either acquired before August 1, 1914, or which, except for the war, might have been acquired since that date as a result of an application made before the war or during its continuance.

All rights in, or in respect of, such property which may have lapsed by reason of any failure to accomplish any act, fulfil any formality, or make any payment shall revive, but subject in the case of patents and designs to the imposition of such conditions as each Allied Power may deem reasonably necessary for the protection of persons who have manufactured or made use of the subject-matter of such property while the rights had lapsed. Further, where rights to patents or designs belonging to Turkish nationals are revived under this Article, they shall be subject in respect of the grant of licences to the same provisions as would have been applicable to them during the war, as well as to all the provisions of the present Treaty.

The period from August 1, 1914, until the coming into force of the present Treaty shall be excluded in considering the time within which a patent should be worked or a trade-mark or design used, and it is further agreed that no patent, registered trade-mark or design in force on August 1, 1914, shall be subject to revocation or cancellation by reason only of the failure to work such patent or use such trade-mark or design for two years after the coming into force of the present Treaty.

ARTICLE 283.

No action shall be brought and no claim made by persons residing or carrying on business within the territories of Turkey on the one part and

of the Allied Powers on the other, or persons who are nationals of such Powers respectively, or by any one deriving title during the war from such persons, by reason of any action which has taken place within the territory of the other party between the date of the existence of a state of war and that of the coming into force of the present Treaty, which might constitute an infringement of the rights of industrial property or rights of literary and artistic property, either existing at any time during the war or revived under the provisions of Article 282.

Equally, no action for infringement of industrial, literary or artistic property rights by such persons shall at any time be permissible in respect of the sale or offering for sale for a period of one year after the signature of the present Treaty in the territories of the Allied Powers on the one hand, or Turkey on the other, of products or articles manufactured, or of literary or artistic works published, during the period between the existence of a state of war and the signature of the present Treaty, or against those who have acquired and continue to use them. It is understood, nevertheless, that this provision shall not apply when the possessor of the rights was domiciled or had an industrial or commercial establishment in the districts occupied by Turkey during the war.

ARTICLE 284.

Licences in respect of industrial, literary or artistic property concluded before the war between nationals of the Allied Powers or persons residing in their territory or carrying on business therein on the one part, and Turkish nationals on the other part, shall be considered as cancelled as from the date of the existence of a state of war between Turkey and the Allied Power. But in any case the former beneficiary of a contract of this kind shall have the right, within a period of six months after the coming into force of the present Treaty, to demand from the proprietor of the rights the grant of a new licence, the conditions of which, in default of agreement between the parties, shall be fixed by the duly qualified tribunal in the country under whose legislation the rights had been acquired, except in the case of licences held in respect of rights acquired under Turkish law. In such cases the conditions shall be fixed by the Arbitral Commission referred to in Article 287. The tribunal or the Commission may, if necessary, fix also the amount which it may deem just should be paid by reason of the use of the rights during the war.

No licence in respect of industrial, literary or artistic property granted under the special war legislation of any Allied Power shall be affected by the continued existence of any licence entered into before the war, but shall remain valid and of full effect, and a licence so granted to the former beneficiary of a licence entered into before the war shall be considered as substituted for such licence.

Where sums have been paid during the war by virtue of a licence or

agreement concluded before the war in respect of rights of industrial property or for the reproduction or the representation of literary, dramatic or artistic works, these sums shall be dealt with in the same manner as other debts or credits of Turkish nationals as provided by the present Treaty.

ARTICLE 285.

The inhabitants of territories detached from Turkey under the present Treaty shall, notwithstanding this transfer and the change of nationality consequent thereon, continue to enjoy in Turkey all the rights in industrial, literary and artistic property to which they were entitled under Turkish legislation at the time of the transfer.

Rights of industrial, literary and artistic property which are in force in the territories detached from Turkey under the present Treaty at the moment of the transfer, or which will be re-established or restored in accordance with the provisions of Article 281, shall be recognised by the State to which the said territory is transferred, and shall remain in force in that territory for the same period of time given them under the Turkish law.

ARTICLE 286.

A special convention shall determine all questions relative to the records, registers and copies in connection with the protection of industrial, literary or artistic property, and fix their eventual transmission or communication by the Turkish offices to the offices of the States in favour of which territory is detached from Turkey.

SECTION IV.—PROPERTY, RIGHTS AND INTERESTS.

ARTICLE 287.

The property, rights and interests situated in territory which was under Turkish sovereignty on August 1, 1914, and belonging to nationals of Allied Powers who were not during the war Turkish nationals, or of companies controlled by them, shall be immediately restored to their owners free of all taxes levied by or under the authority of the Turkish Government or authorities, except such as would have been leviable in accordance with the capitulations. Where property has been confiscated during the war or sequestrated in such a way that its owners enjoyed no benefit therefrom, it shall be restored free of all taxes whatever.

The Turkish Government shall take such steps as may be within its power to restore the owner to the possession of his property free from all encumbrances or burdens with which it may have been charged without his assent. It shall indemnify all third parties injured by the restitution.

If the restitution provided for in this Article cannot be effected, or if the property, rights or interests have been damaged or injured, whether

they have been seized or not, the owner shall be entitled to compensation. Claims made in this respect by the nationals of Allied Powers or by companies controlled by them shall be investigated and the total of the compensation shall be determined by an Arbitral Commission to be appointed by the Council of the League of Nations. This compensation shall be borne by the Turkish Government and may be charged upon the property of Turkish nationals within the territory or under the control of the claimant's State. So far as it is not met from this source it shall be satisfied out of the annuity referred to in Article 236(ii), Part VIII. (Financial Clauses) of the present Treaty.

The above provision shall not impose any obligation on the Turkish Government to pay compensation for damage to property, rights and interests effected since October 30, 1918, in territory in the effective occupation of the Allied Powers and detached from Turkey by the present Treaty. Compensation for any actual damage to such property, rights and interests inflicted by the occupying authorities since the above date shall be a charge on the Allied authorities responsible.

ARTICLE 288.

The property, rights and interests in Turkey of former Turkish nationals who acquire *ipso facto* the nationality of an Allied Power or of a new State in accordance with the provisions of the present Treaty, or any further Treaty regulating the disposal of territories detached from Turkey, shall be restored to them in their actual condition.

ARTICLE 289.

Subject to any contrary stipulations which may be provided in the present Treaty, the Allied Powers reserve the right to retain and liquidate all property, rights and interests of Turkish nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, excluding any territory under Turkish sovereignty on October 17, 1912.

The liquidation shall be carried out in accordance with the laws of the Allied Power concerned, and the Turkish owner shall not be able to dispose of such property rights, or interests, or to subject them to any charge, without the consent of that Power.

ARTICLE 290.

Turkish nationals who acquire *ipso facto* the nationality of an Allied Power or of a new State in accordance with the provisions of the present Treaty, or any further Treaty regulating the disposal of territories detached from Turkey, will not be considered as Turkish nationals within

the meaning of the fifth paragraph of Article 281, Articles 282, 284, the third paragraph of Article 287, Articles 289, 291, 292, 293, 301, 302 and 308.

ARTICLE 291.

All property, rights and interests of Turkish nationals within the territory of any Allied Power, excluding any territory under Turkish sovereignty on October 17, 1912, and the net proceeds of their sale, liquidation or other dealing therewith may be charged by that Allied Power with payment of amounts due in respect of claims by the nationals of that Allied Power under Article 287 or in respect of debts owing to them by Turkish nationals.

The proceeds of the liquidation of such property, rights and interests not used as provided in Article 289 and the first paragraph of this Article shall be paid to the Financial Commission, to be employed in accordance with the provisions of Article 236 (ii), Part VIII (Financial Clauses) of the present Treaty.

ARTICLE 292.

The Turkish Government undertakes to compensate its nationals in respect of the sale or retention of their property, rights or interests in Allied countries.

ARTICLE 293.

The Governments of an Allied Power or new State exercising authority in territory detached from Turkey in accordance with the present Treaty or any other Treaty concluded since October 17, 1912, may liquidate the property, rights and interests of Turkish companies or companies controlled by Turkish nationals in such territory; the proceeds of the liquidation shall be paid direct to the company.

This Article shall not apply to companies in which Allied nationals, including those of the territories placed under mandate, had on August 1, 1914, a preponderant interest.

The provisions of the first paragraph of this Article relating to the payment of the proceeds of liquidation do not apply in the case of railway undertakings where the owner is a Turkish company in which the majority of the capital or the control is held by German, Austrian, Hungarian or Bulgarian nationals either directly or through their interests in a company controlled by them, or was so held on August 1, 1914. In such case the proceeds of the liquidation shall be paid to the Financial Commission.

ARTICLE 294.

The Turkish Government shall, on the demand of the Principal Allied Powers, take over the undertaking, property, rights and interests of any Turkish company holding a railway concession in Turkish territory as it results from the present Treaty, and shall transfer in accordance with

the advice of the Financial Commission the said undertaking, property, rights and interests, together with any interest which it may hold in the line or in the undertaking, at a price to be fixed by an arbitrator nominated by the Council of the League of Nations. The amount of this price shall be paid to the Financial Commission and shall be distributed by it, together with any amount received in accordance with Article 293, among the persons directly or indirectly interested in the company, the proportion attributable to the interests of nationals of Germany, Austria, Hungary or Bulgaria being paid to the Reparation Commission established under the Treaties of Peace with Germany, Austria, Hungary and Bulgaria respectively; the proportion of the price attributable to the Turkish Government shall be retained by the Financial Commission for the purposes referred to in Article 236, Part VIII (Financial Clauses) of the present Treaty.

ARTICLE 295.

Until the expiration of a period of six months from the coming into force of the present Treaty, the Turkish Government will effectively prohibit all dealings with the property, rights and interests within its territory which belong, at the date of the coming into force of the present Treaty, to Germany, Austria, Hungary, Bulgaria or their nationals, except in so far as may be necessary for the carrying into effect of the provisions of Article 260 of the Treaty of Peace with Germany or any corresponding provisions in the Treaties of Peace with Austria, Hungary or Bulgaria.

Subject to any special stipulations in the present Treaty affecting property of the said States, the Turkish Government will proceed to liquidate any of the property, rights or interests above referred to which may be notified to it within the said period of six months by the Principal Allied Powers. The said liquidation shall be effected under the direction of the said Powers and in the manner indicated by them. The prohibition of dealings with such property shall be maintained until the liquidation is completed.

The proceeds of liquidation shall be paid direct to the owners, except where the property so liquidated belongs to the German, Austrian, Hungarian or Bulgarian States, in which event the proceeds shall be handed over to the Reparation Commission established under the Treaty of Peace with the State to which the property belonged.

ARTICLE 296.

The Governments exercising authority in territory detached from Turkey in accordance with the present Treaty may liquidate any property, rights and interests within such territory which belong at the date of the coming into force of the present Treaty to Germany, Austria, Hungary, Bulgaria or their nationals, unless they have been dealt with under the

provisions of Article 260 of the Treaty of Peace with Germany or any corresponding provisions in the Treaties of Peace with Austria, Hungary or Bulgaria.

The proceeds of liquidation shall be disposed of in the manner provided in Article 295.

ARTICLE 297.

If on the application of the owner the Arbitral Commission provided for in Article 287 is satisfied that the conditions of sale of any property liquidated in virtue of Articles 293, 295 or 296, or measures taken outside its general legislation by the Government exercising authority in the territory in which the property was situated, were unfairly prejudicial to the price obtained, the Commission shall have discretion to award to the owner equitable compensation to be paid by that Government.

ARTICLE 298.

The validity of vesting orders and of orders for the winding-up of businesses or companies and of any other orders, directions, decisions or instructions of any court or any department of the Government of any of the Allied Powers made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests in their territories is confirmed.

The interests of all persons shall be regarded as having been effectively dealt with by any order, direction, decision or instruction dealing with such property in which they may be interested, whether or not such interests are specifically mentioned in the order, direction, decision or instruction.

No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction.

Every action taken with regard to any property, business or company in the territories of the Allied Powers, whether as regards its investigation, sequestration, compulsory administration, use, requisition, supervision or winding-up, the sale or management of property, rights or interests, the collection or discharge of debts, the payment of costs, charges or expenses, or any other matter whatsoever in pursuance of orders, directions, decisions or instructions of any court or of any department of the Government of any of the Allied Powers, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights or interests, is confirmed.

ARTICLE 299.

The validity of any measures taken between October 30, 1918, and the coming into force of the present Treaty by or under the authority of one

or more of the Allied Powers in regard to the property, rights and interests in Turkish territory of Germany, Austria, Hungary or Bulgaria or their nationals is confirmed. Any balance remaining under the control of the Allied Powers as the result of such measures shall be disposed of in the manner provided in the last paragraph of Article 295.

ARTICLE 300.

No claim or action shall be made or brought against any Allied Power or against any person acting on behalf of or under the direction of any legal authority or department of the Government of such a Power by Turkey or by or on behalf of any person wherever resident who on August 1, 1914, was a Turkish national, or who became such after that date, in respect of any act or omission with regard to the property, rights or interests of Turkish nationals during the war or in preparation for the war.

Similarly, no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied Power.

ARTICLE 301.

The Turkish Government, if required, will, within six months from the coming into force of the present Treaty, deliver to each Allied Power any securities, certificates, deeds or documents of title held by its nationals and relating to property, rights or interests which are subject to liquidation in accordance with the provisions of the present Treaty, including any shares, stock, debentures, debenture stock or other obligations of any company incorporated in accordance with the laws of that Power.

The Turkish Government will, at any time on demand of any Allied Power concerned, furnish such information as may be required with regard to such property, rights and interests, or with regard to any transactions concerning such property, rights or interests since July 1, 1914.

ARTICLE 302.

Debts, other than the Ottoman Public Debt provided for in Article 236 and Annex I, Part VIII (Financial Clauses) of the present Treaty, between the Turkish Government or its nationals resident in Turkish territory on the coming into force of the present Treaty (with the exception of Turkish companies controlled by Allied groups or nationals) on the one hand, and the Governments of the Allied Powers or their nationals who were not on August 1, 1914, Turkish nationals or (except in the case of foreign officials in the Turkish service, in regard to their salaries, pensions or official remuneration) resident or carrying on business in Turkish territory, on the other hand, which were payable before the war, or be-

came payable during the war and arose out of transactions or contracts of which the total or partial execution was suspended on account of the war, shall be paid or credited in the currency of such one of the Allied Powers, their colonies or protectorates, or the British Dominions or India, as may be concerned. If a debt was payable in some other currency the conversion shall be effected at the pre-war rate of exchange.

For the purpose of this provision the pre-war rate of exchange shall be defined as the average cable transfer rate prevailing in the Allied country concerned during the month immediately preceding the outbreak of war between the said country and Turkey.

If a contract provides for a fixed rate of exchange governing the conversion of the currency in which the debt is stated into the currency of the Allied Power concerned, then the above provisions concerning the rate of exchange shall not apply.

The proceeds of liquidation of enemy property, rights and interests and the cash assets of enemies, referred to in this Section, shall also be accounted for in the currency and at the rate of exchange provided for above.

The provisions of this Article regarding the rate of exchange shall not affect debts due to or from persons resident in territories detached from Turkey in accordance with the present Treaty.

ARTICLE 303.

The provisions of Articles 287 to 302 apply to industrial, literary and artistic property which has been or may be dealt with in the liquidation of property, rights, interests, companies or businesses under war legislation by the Allied Powers, or in accordance with the stipulations of the present Treaty.

SECTION V.—CONTRACTS, PRESCRIPTIONS, JUDGMENTS.

ARTICLE 304.

Subject to the exceptions and special rules with regard to particular contracts or classes of contracts contained in the Annex hereto, any contract concluded between enemies will be maintained or dissolved according to the law of the Allied Power of which the party who was not a Turkish subject on August 1, 1914, is a national, and on the conditions prescribed by that law.

ARTICLE 305.

All periods of prescription or limitation of right of action, whether they began to run before or after the outbreak of war, shall be treated in the territory of the High Contracting Parties, so far as regards relations between enemies, as having been suspended from October 29, 1914, till

the coming into force of the present Treaty. They shall begin to run again at earliest three months after the coming into force of the present Treaty. This provision shall apply to the period prescribed for the presentation of interest or divided coupons or for the presentation for repayment of securities drawn for repayment or repayable on any other ground.

Having regard to the provisions of the law of Japan, neither the present Article nor Article 304 nor the Annex hereto shall apply to contracts made between Japanese nationals and Turkish nationals.

ARTICLE 306.

As between enemies no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment, or to give notice of non-acceptance or non-payment to drawers or endorsers, or to protest the instrument, nor by reason of failure to complete any formality during the war.

Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or endorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment or protest may be made.

ARTICLE 307.

Judgments given or measures of execution ordered during the war by any Turkish judicial or administrative authority against or prejudicially affecting the interests of a person who was at the time a national of an Allied Power or against or affecting the interests of a company in which such an Allied national was interested, shall be subject to revision, on the application of that national, by the Arbitral Commission provided for in Article 287. Where such a course is equitable and possible the parties shall be replaced in the situation which they occupied before the judgment was given or the measure of execution ordered by the Turkish authority. Where that is not possible, the national of an Allied Power who has suffered prejudice by the judgment or measure of execution shall be entitled to recover such compensation as the Arbitral Commission may consider equitable, such compensation to be paid by the Turkish Government.

Where a contract has been dissolved by reason either of failure on the part of either party to carry out its provisions or of the exercise of a right stipulated in the contract itself, the party prejudiced may apply to the Arbitral Commission. This Commission may grant compensation to the prejudiced party, or may order the restoration of any rights in Turkey which have been prejudiced by the dissolution wherever, having regard to the circumstances of the case, such restoration is equitable and possible.

Turkey shall compensate any third party who may be prejudiced by any restitution or restoration effected in accordance with the provisions of this Article.

ARTICLE 308.

All questions relating to contracts concluded before the coming into force of the present Treaty between persons who were or have become nationals of the Allied Powers or of the new States whose territory is detached from Turkey and Turkish nationals shall be decided by the national Courts or the consular Courts of the Allied Power or new State of which one of the parties to the contract is a national, to the exclusion of the Turkish Courts.

ARTICLE 309.

Judgments given by the national or consular Courts of an Allied Power or new State whose territory is detached from Turkey, or orders made by the Arbitral Commission provided for in Article 287, in all cases which, under the present Treaty, they are competent to decide, shall be recognised in Turkey as final, and shall be enforced without it being necessary to have them declared executory.

ANNEX.

I. GENERAL PROVISIONS.

1. Within the meaning of Articles 304 to 306 and of the provisions of this Annex, the parties to a contract shall be regarded as enemies when trading between them became impossible in fact, or was prohibited by or otherwise became unlawful under laws, orders or regulations to which one of those parties was subject. They shall be deemed to have become enemies from the date when such trading became impossible in fact or was prohibited or otherwise became unlawful.

2. The following classes of contracts remain in force subject to the application of domestic laws, orders or regulations made during the war by the Allied Powers and subject to the terms of the contracts:

- (a) Contracts having for their object the transfer of estates or of real or personal property, where the property therein had passed or the object had been delivered before the parties became enemies;
- (b) Leases and agreements for leases of land and houses;
- (c) Contracts of mortgage, pledge, or lien;

(d) Contracts between individuals or companies and the State, provinces, municipalities, or other similar juridical persons charged with administrative functions, and concessions granted by the State, provinces, municipalities, or other similar juridical persons charged with administrative functions, subject however to any special provisions relating to concessions laid down in the present Treaty.

When the execution of the contracts thus kept alive would, owing to the alteration of economic conditions, cause one of the parties substantial prejudice, the Arbitral Commission provided for in Article 287 shall be empowered, on the request of the prejudiced party, to grant to him equitable compensation by way of reparation.

II. PROVISIONS RELATING TO CERTAIN CLASSES OF CONTRACTS.

Stock Exchange and Commercial Exchange Contracts.

3. (a) Rules made during the war by any recognised Exchange or Commercial Association providing for the closure of contracts entered into before the war by an enemy are confirmed by the High Contracting Parties, as also any action taken thereunder, provided:

(i) that the contract was expressed to be made subject to the rules of the Exchange or Association in question;

(ii) that the rules applied to all persons concerned;

(iii) that the conditions attaching to the closure were fair and reasonable.

(b) The closure of contracts relating to cotton "futures" which were closed as on July 31, 1914, under the decision of the Liverpool Cotton Association, is also confirmed.

Security.

4. The sale of a security held for an unpaid debt owing by an enemy shall be deemed to have been valid irrespective of notice to the owner if the creditor acted in good faith and with reasonable care and prudence, and no claim by the debtor on the ground of such sale shall be admitted.

Negotiable Instruments.

5. If a person has either before or during the war become liable upon a negotiable instrument in accordance with an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of his liability, notwithstanding the outbreak of war.

III. CONTRACTS OF INSURANCE.

6. The provisions of the following paragraphs shall apply only to insurance and reinsurance contracts between Turkish nationals and nationals of the Allied Powers in the case of which trading with Turkey has been prohibited. These provisions shall not apply to contracts between Turk-

ish nationals and companies or individuals, even if nationals of the Allied Powers, established in territory detached from Turkey under the present Treaty.

In cases where the provisions of the following paragraphs do not apply, contracts of insurance and reinsurance shall be subject to the provisions of Article 304.

Fire Insurance.

7. Contracts for the insurance of property against fire entered into by a person interested in such property with another person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy, or on account of the failure during the war and for a period of three months thereafter to perform his obligations under the contract, but they shall be dissolved at the date when the annual premium becomes payable for the first time after the expiration of a period of three months after the coming into force of the present Treaty.

A settlement shall be effected of unpaid premiums which became due during the war, or of claims for losses which occurred during the war.

8. Where by administrative or legislative action an insurance against fire effected before the war has been transferred during the war from the original to another insurer, the transfer will be recognised and the liability of the original insurer will be deemed to have ceased as from the date of the transfer. The original insurer will, however, be entitled to receive on demand full information as to the terms of the transfer, and if it should appear that these terms were not equitable, they shall be amended so far as may be necessary to render them equitable.

Furthermore, the insured shall, subject to the concurrence of the original insurer, be entitled to retransfer the contract to the original insurer as from the date of the demand.

Life Insurance.

9. Contracts of life insurance entered into between an insurer and a person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war or by the fact of the person becoming an enemy.

Any sum which during the war became due upon a contract deemed not to have been dissolved under the preceding provision shall be recoverable after the war with the addition of interest at 5 per cent. per annum from the date of its becoming due up to the day of payment.

Where the contract has lapsed during the war owing to non-payment of premiums, or has become void from breach of the conditions of the contract, the assured or his representatives or the persons entitled shall have the right at any time within twelve months of the coming into force

of the present Treaty to claim from the insurer the surrender value of the policy at the date of its lapse or avoidance.

10. Where contracts of life insurance have been entered into by a local branch of an insurance company established in a country which subsequently became an enemy country, the contract shall, in the absence of any stipulation to the contrary in the contract itself, be governed by the local law, but the insurer shall be entitled to demand from the insured or his representatives the refund of sums paid or claims made or enforced under measures taken during the war, if the making or enforcement of such claims was not in accordance with the terms of the contract itself or was not consistent with the laws or treaties existing at the time when it was entered into.

11. In any case where by the law applicable to the contract the insurer remains bound by the contract, notwithstanding the non-payment of premiums, until notice is given, the insured of the termination of the contract, he shall be entitled where the giving of such notice was prevented by the war to recover the unpaid premiums with interest at 5 per cent. per annum from the insured.

12. Insurance contracts shall be considered as contracts of life assurance for the purpose of paragraphs 9 to 11 when they depend on the probabilities of human life combined with the rate of interest for the calculation of the reciprocal engagements between the two parties.

Marine Insurance.

13. Contracts of marine insurance, including time policies and voyage policies, entered into between an insurer and a person who subsequently became an enemy, shall be deemed to have been dissolved on his becoming an enemy, except in cases where the risk undertaken in the contract had attached before he became an enemy.

Where the risk had not attached, money paid by way of premium or otherwise shall be recoverable from the insurer.

Where the risk had attached effect shall be given to the contract, notwithstanding the party becoming an enemy, and sums due under the contract either by way of premiums or in respect of losses shall be recoverable after the coming into force of the present Treaty.

In the event of any agreement being come to for the payment of interest on sums due before the war to or by the nationals of States which have been at war and recovered after the war, such interest shall in the case of losses recoverable under contracts of marine insurance run from the expiration of a period of one year from the date of the loss.

14. No contract of marine insurance with an insured person who subsequently became an enemy shall be deemed to cover losses due to belligerent action by the Power of which the insurer was a national or by the allies of such Power.

15. Where it is shown that a person who had before the war entered into a contract of marine insurance with an insurer who subsequently became an enemy entered after the outbreak of war into a new contract covering the same risk with an insurer who was not an enemy, the new contract shall be deemed to be substituted for the original contract as from the date when it was entered into, and the premiums payable shall be adjusted on the basis of the original insurer having remained liable on the contract only up till the time when the new contract was entered into.

Other Insurances.

16. Contracts of insurance entered into before the war between an insurer and a person who subsequently became an enemy, other than contracts dealt with in paragraphs 7 to 15, shall be treated in all respects on the same footing as contracts of fire insurance between the same persons would be dealt with under the said paragraphs.

Reinsurance.

17. All treaties of reinsurance with a person who became an enemy shall be regarded as having been abrogated by the person becoming an enemy, but without prejudice in the case of life or marine risks which had attached before the war to the right to recover payment after the war for sums due in respect of such risks.

Nevertheless, if, owing to invasion, it has been impossible for the reinsured to find another reinsurer, the treaty shall remain in force until three months after the coming into force of the present Treaty.

When a reinsurance treaty becomes void under this paragraph there shall be an adjustment of accounts between the parties in respect both of premiums paid and payable and of liabilities for losses in respect of life or marine risk which had attached before the war. In the case of risks other than those mentioned in paragraphs 9 to 15, the adjustment of accounts shall be made as at the date of the parties becoming enemies, without regard to claims for losses which may have occurred since that date.

18. The provisions of paragraph 17 will extend equally to reinsurances existing at the date of the parties becoming enemies of particular risks undertaken by the insurer in a contract of insurance against any risk other than life or marine risks.

19. Reinsurance of life risks effected by particular contracts and not under any general treaty remain in force.

20. In case of a reinsurance effected before the war of a contract of marine insurance, the cession of a risk which had been ceded to the reinsurer shall, if it had attached before the outbreak of war, remain valid and effect be given to the contract, notwithstanding the outbreak of war;

sums due under the contract of reinsurance in respect either of premiums or of losses shall be recoverable after the war.

21. The provisions of paragraphs 14 and 15 and the last part of paragraph 13 shall apply to contracts for the reinsurance of marine risks.

SECTION VI.—COMPANIES AND CONCESSIONS.

ARTICLE 310.

In application of the provisions of Article 287, Allied nationals and companies controlled by Allied groups or nationals holding concessions granted before October 29, 1914, by the Turkish Government or by any Turkish local authority in territory remaining Turkish under the present Treaty, or holding concessions which may be assigned to them by the Financial Commission in virtue of Article 294, shall be replaced by such Government or authorities in complete possession of the rights resulting from the original concession contract and any subsequent agreements prior to October 29, 1914. The Turkish Government undertakes to adapt such contracts or agreements to the new economic conditions, and to extend them for a period equal to the interval between October 29, 1914, and the coming into force of the present Treaty. In cases of dispute with the Turkish Government the matter shall be submitted to the Arbitral Commission referred to in Article 287.

All legislative or other provisions, all concessions and all agreements subsequent to October 29, 1914, and prejudicial to the rights referred to in the preceding paragraph shall be declared null and void by the Turkish Government.

The concessionnaires referred to in this Article may, if the Financial Commission approves, abandon the whole or part of the compensation accorded to them by the Arbitral Commission under the conditions laid down in Article 287 for damage or loss suffered during the war, in exchange for contractual compensation.

ARTICLE 311.

In territories detached from Turkey to be placed under the authority or tutelage of one of the Principal Allied Powers, Allied nationals and companies controlled by Allied groups or nationals holding concessions granted before October 29, 1914, by the Turkish Government or by any Turkish local authority shall continue in complete enjoyment of their duly acquired rights, and the Power concerned shall maintain the guarantees granted or shall assign equivalent ones.

Nevertheless, any such Power, if it considers that the maintenance of any of these concessions would be contrary to the public interest, shall be entitled, within a period of six months from the date on which the territory is placed under its authority or tutelage, to buy out such concession

or to propose modifications therein; in that event it shall be bound to pay to the concessionnaire equitable compensation in accordance with the following provisions.

If the parties cannot agree on the amount of such compensation, it will be determined by Arbitral Tribunals composed of three members, one designated by the State of which the concessionnaire or the holders of the majority of the capital in the case of a company is or are nationals, one by the Government exercising authority in the territory in question, and the third designated, failing agreement between the parties, by the Council of the League of Nations.

The Tribunal shall take into account, from both the legal and equitable standpoints, all relevant matters, on the basis of the maintenance of the contract adapted as indicated in the following paragraph.

The holder of a concession which is maintained in force shall have the right, within a period of six months after the expiration of the period specified in the second paragraph of this Article, to demand the adaptation of his contract to the new economic conditions, and in the absence of agreement direct with the Government concerned the decision shall be referred to the Arbitral Commission provided for above.

ARTICLE 312.

In all territories detached from Turkey, either as a result of the Balkan Wars in 1913, or under the present Treaty, other than those referred to in Article 311, the State which definitely acquires the territory shall *ipso facto* succeed to the duties and charges of Turkey towards concessionnaires and holders of contracts, referred to in the first paragraph of Article 311, and shall maintain the guarantees granted or assign equivalent ones.

This succession shall take effect, in the case of each acquiring State, as from the coming into force of the Treaty under which the cession was effected. Such State shall take all necessary steps to ensure that the concessions may be worked and the carrying out of the contracts proceeded with without interruption.

Nevertheless, as from the coming into force of the present Treaty, negotiations may be entered into between the acquiring States and the holders of contracts or concessions, with a view to a mutual agreement for bringing such concessions and contracts into conformity with the legislation of such States and the new economic conditions. Should agreement not have been reached within six months, the State or the holders of the concessions or contracts may submit the dispute to an Arbitral Tribunal constituted as provided in Article 311.

ARTICLE 313.

The application of Articles 311 and 312 shall not give rise to any award of compensation in respect of the right to issue paper money.

ARTICLE 314.

The Allied Powers shall not be bound to recognise in territory detached from Turkey the validity of the grant of any concession granted by the Turkish Government or by Turkish local authorities after October 29, 1914, nor the validity of the transfer of any concession effected after that date. Any such concessions and transfers may be declared null and void, and their cancellation shall give rise to no compensation.

ARTICLE 315.

All concessions or rights in concessions granted by the Turkish Government since October 30, 1918, and all such concessions or rights granted since August 1, 1914, in favour of German, Austrian, Hungarian, Bulgarian or Turkish nationals or companies controlled by them, until the date of the coming into force of the present Treaty, are hereby annulled.

ARTICLE 316.

(a) Any company incorporated in accordance with Turkish law and operating in Turkey which is now or shall hereafter be controlled by Allied nationals shall have the right, within five years from the coming into force of the present Treaty, to transfer its property, rights and interests to another company incorporated in accordance with the law of one of the Allied Powers whose nationals control it; and the company to which the property, rights and interests are transferred shall continue to enjoy the same rights and privileges as the other company enjoyed under the laws of Turkey and the terms of the present Treaty, subject to meeting obligations previously incurred.

The Turkish Government undertakes to modify its legislation so as to allow companies of Allied nationality to hold concessions or contracts in Turkey.

(b) Any company incorporated in accordance with Turkish law and operating in territory detached from Turkey, which is now or hereafter shall be controlled by Allied nationals, shall, in the same way and within the same period, have the right to transfer its property, rights and interests to another company incorporated in accordance with the law either of the State exercising authority in the territory in question or of one of the Allied Powers whose nationals control it. The company to which the property, rights and interests are transferred shall continue to enjoy the same rights and privileges as the other company enjoyed, including those conferred on it by the present Treaty.

(c) In Turkey companies of Allied nationality to which the property, rights and interests of Turkish companies shall have been transferred in virtue of paragraph (a) of this Article, and, in territories detached from Turkey, companies of Turkish nationality controlled by Allied groups or

nationals and companies of nationality other than that of the State exercising authority in the territory in question to which the property, rights and interests of Turkish companies shall have been transferred in virtue of paragraph (b) of this Article, shall not be subjected to legislative or other provisions or to taxes, imposts or charges more onerous than those applied in Turkey to similar companies possessing Turkish nationality, and in territory detached from Turkey to those possessing the nationality of the State exercising authority therein.

(d) The companies to which the property, rights and interests of Turkish companies are transferred in virtue of paragraphs (a) and (b) of this Article shall not be subjected to any special tax on account of this transfer.

SECTION VII.—GENERAL PROVISION.

ARTICLE 317.

The term “nationals of the Allied Powers,” wherever used in this Part or in Part VIII (Financial Clauses), covers:

- (1) all nationals, including companies and associations, of an Allied Power or of a State or territory under the protectorate of an Allied Power;
- (2) the protected persons of the Allied Powers whose certificate of protection was granted before August 1, 1914;
- (3) Turkish financial, industrial and commercial companies controlled by Allied groups or nationals, or in which such groups or nationals possessed the preponderant interest on August 1, 1914;
- (4) religious or charitable institutions and scholastic establishments in which nationals or protected persons of the Allied Powers are interested.

The Allied Powers will communicate to the Financial Commission, within one year from the coming into force of the present Treaty, the list of companies, institutions and establishments in which they consider that their nationals possess a preponderant interest or are interested.

PART X.—AERIAL NAVIGATION.

ARTICLE 318.

The aircraft of the Allied Powers shall have full liberty of passage and landing over and in the territory and territorial waters of Turkey, and shall enjoy the same privileges as Turkish aircraft, particularly in case of distress by land or sea.

ARTICLE 319.

The aircraft of the Allied Powers shall, while in transit to any foreign country whatever, enjoy the right of flying over the territory and territorial waters of Turkey without landing, subject always to any regulations

which may be made by Turkey with the assent of the Principal Allied Powers, and which shall be applicable equally to the aircraft of Turkey and to those of the Allied countries.

ARTICLE 320.

All aerodromes in Turkey open to national public traffic shall be open for the aircraft of the Allied Powers, and in any such aerodrome such aircraft shall be treated on a footing of equality with Turkish aircraft as regards charges of every description, including charges for landing and accommodation.

In addition to the above-mentioned aerodromes, Turkey undertakes to establish aerodromes in such localities as may be designated by the Allied Powers within one year from the coming into force of the present Treaty. The provisions of this Article will apply to such aerodromes.

The Allied Powers reserve the right, in the event of the provisions of this Article not being carried out, to take all necessary measures to permit of international aerial navigation over the territory and territorial waters of Turkey.

ARTICLE 321.

Subject to the present provisions, the rights of passage, transit and landing provided for in Articles 318, 319 and 320 are subject to the observance of such regulations as Turkey may consider it necessary to enact, but such regulations must be approved by the Principal Allied Powers and shall be applied without distinction to Turkish aircraft and to those of the Allied countries.

ARTICLE 322.

Certificates of nationality, air-worthiness or competency and licences, issued or recognised as valid by any of the Allied Powers, shall be recognised in Turkey as valid and as equivalent to the certificates and licences issued by Turkey.

ARTICLE 323.

As regards internal commercial air traffic the aircraft of the Allied Powers shall enjoy in Turkey most-favoured-nation treatment.

ARTICLE 324.

The benefit of the provisions of Articles 318 and 319 shall not, without the consent of the Allied Powers, be extended by Turkey to States which fought on her side in the war of 1914-1919 so long as such States have not become Members of the League of Nations or been admitted to adhere to the Convention concluded at Paris on October 13, 1919, relating to Aerial Navigation.

ARTICLE 325.

No concession or rights in a concession relating to civil aerial navigation shall be granted by Turkey, without the consent of the Allied Powers, to nationals of States which fought on her side in the war of 1914-1919 so long as such States have not become Members of the League of Nations or been admitted to adhere to the Convention concluded at Paris on October 13, 1919, relating to Aerial Navigation.

ARTICLE 326.

Turkey undertakes to enforce the necessary measures to ensure that all Turkish aircraft flying over her territory shall comply with the rules as to lights and signals, rules of the air and rules for air traffic on and in the neighbourhood of aerodromes, which have been laid down in the Convention concluded at Paris on October 13, 1919, relating to Aerial Navigation.

ARTICLE 327.

The obligations imposed by the provisions of this Part shall remain in force until Turkey shall have been admitted into the League of Nations or shall have been authorised, in accordance with the provisions of the Convention relating to Aerial Navigation concluded at Paris on October 13, 1919, to adhere to that Convention.

PART XI.—PORTS, WATERWAYS AND RAILWAYS.

SECTION I.—GENERAL PROVISIONS.

ARTICLE 328.

Turkey undertakes to grant freedom of transit through her territories on the routes most convenient for international transit, either by rail, navigable waterway or canal, to persons, goods, vessels, carriages, waggons and mails coming from or going to the territories of any of the Allied Powers, whether contiguous or not; for this purpose the crossing of territorial waters shall be allowed. Such persons, goods, vessels, carriages, waggons and mails shall not be subjected to any transit duty or to any undue delays or restrictions, and shall be entitled in Turkey to national treatment as regards charges, facilities and all other matters.

Goods in transit shall be exempt from all customs or other similar duties.

All charges imposed on transport in transit shall be reasonable having regard to the conditions of the traffic. No charge, facility or restriction shall depend directly or indirectly on the ownership or the nationality of the ship or other means of transport on which any part of the through journey has been, or is to be, accomplished.

ARTICLE 329.

Turkey undertakes neither to impose nor to maintain any control over transmigration traffic through her territories beyond measures necessary to ensure that passengers are *bonâ fide* in transit; nor to allow any shipping company or any other private body, corporation or person interested in the traffic to take any part whatever in, or to exercise any direct or indirect influence over, any administrative service that may be necessary for this purpose.

ARTICLE 330.

Turkey undertakes to make no discrimination or preference, direct or indirect, in the duties, charges and prohibitions relating to importations into or exportations from her territories, or, subject to any special provisions in the present Treaty, in the charges and conditions of transport of goods or persons entering or leaving her territories, based on the frontier crossed, or on the kind, ownership or flag of the means of transport (including aircraft) employed, or on the original or immediate place of departure of the vessel, waggon or aircraft or other means of transport employed, or its ultimate or intermediate destination, or on the route of or places of trans-shipment on the journey, or on whether any port through which the goods are imported or exported is a Turkish port or a port belonging to any foreign country, or on whether the goods are imported or exported by sea, by land or by air.

Turkey particularly undertakes not to establish against the ports and vessels of any of the Allied Powers any surtax or any direct or indirect bounty for export or import by Turkish ports or vessels, or by those of another Power, for example, by means of combined tariffs. She further undertakes that persons or goods passing through a port or using a vessel of any of the Allied Powers shall not be subjected to any formality or delay whatever to which such persons or goods would not be subjected if they passed through a Turkish port or a port of any other Power, or used a Turkish vessel or a vessel of any other Power.

ARTICLE 331.

All necessary administrative and technical measures shall be taken to expedite, as much as possible, the transmission of goods across the Turkish frontiers and to ensure their forwarding and transport from such frontiers irrespective of whether such goods are coming from or going to the territories of the Allied Powers or are in transit from or to those territories, under the same material conditions in such matters as rapidity of carriage and care *en route* as are enjoyed by other goods of the same kind carried on Turkish territory under similar conditions of transport.

In particular, the transport of perishable goods shall be promptly and regularly carried out, and the customs formalities shall be effected in such

a way as to allow the goods to be carried straight through by trains which make connection.

ARTICLE 332.

The seaports of the Allied Powers are entitled to all favours and to all reduced tariffs granted on Turkish railways or navigable waterways for the benefit of Turkish ports (without prejudice to the rights of concessionaires) or of any port of another Power.

ARTICLE 333.

Subject to the rights of concessionaires, Turkey may not refuse to participate in the tariffs or combinations of tariffs intended to secure for ports of any of the Allied Powers advantages similar to those granted by Turkey to her own ports or the ports of any other Power.

SECTION II.—NAVIGATION.

CHAPTER I.—FREEDOM OF NAVIGATION.

ARTICLE 334.

The nationals of any of the Allied Powers as well as their vessels and property shall enjoy in all Turkish ports and on the inland navigation, routes of Turkey at least the same treatment in all respects as Turkish nationals, vessels and property.

In particular, the vessels of any one of the Allied Powers shall be entitled to transport goods of any description and passengers to or from any ports or places in Turkish territory to which Turkish vessels may have access, under conditions which shall not be more onerous than those applied in the case of national vessels; they shall be treated on a footing of equality with national vessels as regards port and harbour facilities and charges of every description, including facilities for stationing, loading and unloading, tonnage duties and charges, harbour, pilotage, lighthouse, quarantine and all analogous duties and charges of whatsoever nature levied in the name of or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind.

In the event of Turkey granting a preferential régime to any of the Allied Powers or to any other foreign Power, this régime shall be extended immediately and unconditionally to all the Allied Powers.

There shall be no restrictions on the movement of persons or vessels other than those arising from prescriptions concerning customs, police, public health, emigration, and immigration and those relating to the import and export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

CHAPTER II.—PORTS OF INTERNATIONAL CONCERN.

ARTICLE 335.

The following Eastern ports are declared ports of international concern and placed under the régime defined in the following Articles of this section:

Constantinople, from San Stefano to Dolma Bagtchi;
Haidar Pasha;
Smyrna;
Alexandretta;
Haifa;
Basra;
Trebizond (in the conditions laid down in Article 352);
Batum (subject to conditions to be subsequently fixed).
Free zones shall be provided in these ports.

Subject to any provisions to the contrary in the present Treaty, the régime laid down for the above ports shall not prejudice the territorial sovereignty.

1. Navigation.

ARTICLE 336.

In the ports declared of international concern the nationals, goods and flags of all States, Members of the League of Nations, shall enjoy complete freedom in the use of the port. In this connection and in all respects they shall be treated on a footing of perfect equality, particularly as regards all port and quay facilities and charges, including facilities for berthing, loading and discharging, tonnage dues and charges, quay, pilotage, light-house, quarantine and all similar dues and charges of whatsoever nature, levied in the name of or for the profit of the Government, public functionaries, private individuals, corporations or establishments of every kind, no distinction being made between the nationals, goods and flags of the different States and those of the State under whose sovereignty or authority the port is placed.

There shall be no restrictions on the movement of persons or vessels other than those arising from regulations concerning customs, police, public health, emigration and immigration and those relating to the import and export of prohibited goods. Such regulations must be reasonable and uniform and must not impede traffic unnecessarily.

2. Dues and Charges.

ARTICLE 337.

All dues and charges for the use of the port or of its approaches, or for the use of facilities provided in the port, shall be levied under the conditions of equality prescribed in Article 336, and shall be reasonable

both as regards their amount and their application, having regard to the expenses incurred by the port authority in the administration, upkeep and improvement of the port and of the approaches thereto, or in the interests of navigation.

Subject to the provisions of Article 54, Part III (Political Clauses) of the present Treaty all dues and charges other than those provided for in the present Article or in Articles 338, 342, or 343 are forbidden.

ARTICLE 338.

All customs, local octroi or consumption dues, duly authorised, levied on goods imported or exported through a port subject to the international régime shall be the same, whether the flag of the vessel which effected or is to effect the transport be the flag of the State exercising sovereignty or authority over the port or any other flag. In the absence of special circumstances justifying an exception on account of economic needs, such dues must be fixed on the same basis and at the same tariffs as similar duties levied on the other customs frontiers of the State concerned. All facilities which may be accorded by such State over other land or water routes or at other ports for the import or export of goods shall be equally granted to imports and exports through the port subject to the international régime.

3. *Works.*

ARTICLE 339.

In the absence of any special arrangement relative to the execution of works for maintaining and improving the port, it shall be the duty of the State under whose sovereignty or authority the port is placed to take suitable measures to remove any obstacle or danger to navigation and to secure facilities for the movements of ships in the port.

ARTICLE 340.

The State under whose sovereignty or authority the port is placed must not undertake any works liable to prejudice the facilities for the use of the port or of its approaches.

4. *Free Zones.*

ARTICLE 341.

The facilities granted in a free zone for the erection or use of warehouses and for packing and unpacking goods shall be in accordance with trade requirements for the time being. All goods allowed to be consumed in the free zone shall be exempt from customs, excise and all other duties of any description whatsoever, apart from the statistical duty provided for in Article 342. Unless otherwise provided in the present Treaty, it shall be within the discretion of the State under whose sovereignty or

authority the port is placed to permit or to prohibit manufacture within the free zone. There shall be no discrimination in regard to any of the provisions of this Article either between persons belonging to different nationalities or between goods of different origin or destination.

ARTICLE 342.

No duties or charges, other than those provided for in Article 336, shall be levied on goods arriving in the free zone or departing therefrom, from whatever foreign country they come or for whatever foreign country they are destined, other than a statistical duty which shall not exceed 1 per mille *ad valorem*. The proceeds of this statistical duty shall be devoted exclusively to the maintenance of the service dealing with the statistics relating to the traffic of the free zone.

ARTICLE 343.

Subject to the provisions of Article 344, the duties referred to in Article 338 may be levied under the conditions laid down in that Article on goods coming from or going to the free zone on their importation into the territory of the State under whose sovereignty or authority the port is placed or on their exportation from such territory respectively.

ARTICLE 344.

Persons, goods, postal services, ships, vessels, carriages, waggons and other means of transport coming from or going to the free zone, and crossing the territory of the State under whose sovereignty or authority the port is placed, shall be deemed to be in transit across that State if they are going to or coming from the territory of any other State whatsoever.

5. *Disputes.*

ARTICLE 345.

Subject to the provisions contained in Article 61, Part III (Political Clauses), differences which may arise between interested States with regard to the interpretation or to the application of the dispositions contained in Articles 335 to 344, as well as, in general, any differences between interested States with regard to the use of the ports, shall be settled in accordance with the conditions laid down by the League of Nations.

Differences with regard to the execution of works liable to prejudice the facilities for the use of the port or of its approaches shall be dealt with by an accelerated procedure, and may be the object of an expression of opinion, or of a provisional decision which may prescribe the suspension or the immediate suppression of the said works, without prejudice to the ultimate opinion or decision in the case.

CHAPTER III.—CLAUSES RELATING TO THE MARITSA AND THE DANUBE.

ARTICLE 346.

On a request being made by one of the riparian States to the Council of the League of Nations, the Maritsa shall be declared an international river, and shall be subject to the régime of international rivers laid down in Articles 332 to 338 of the Treaty of Peace concluded with Germany on June 28, 1919.

ARTICLE 347.

On a request being made to the Council of the League of Nations by any riparian State, the Maritsa shall be placed under the administration of an International Commission, which shall comprise one representative of each riparian State and one representative of Great Britain, one of France and one of Italy.

ARTICLE 348.

Without prejudice to the provisions of Article 133, Part III (Political Clauses), Turkey hereby recognizes and accepts all the dispositions relating to the Danube inserted in the Treaties of Peace concluded with Germany, Austria, Hungary and Bulgaria, and the régime for that river resulting therefrom.

CHAPTER IV.—CLAUSES GIVING TO CERTAIN STATES THE USE OF CERTAIN PORTS.

ARTICLE 349.

In order to ensure to Turkey free access to the Mediterranean and Ægean Seas, freedom of transit is accorded to Turkey over the territories and in the ports detached from Turkey.

Freedom of transit is the freedom defined in Article 328, until such time as a General Convention on the subject shall have been concluded, whereupon the dispositions of the new Convention shall be substituted therefor.

Special conventions between the States or Administrations concerned will lay down, as regards Turkey with the assent of the Financial Commission, the conditions of the exercise of the right accorded above, and will settle in particular the method of using the ports and the free zones existing in them, the establishment of international (joint) services and tariffs, including through tickets and waybills, and the application of the Convention of Berne of October 14, 1890, and its supplementary provisions, until its replacement by a new Convention.

Freedom of transit will extend to postal, telegraphic and telephonic services.

ARTICLE 350.

In the port of Smyrna, Turkey will be accorded a lease in perpetuity, subject to determination by the League of Nations, of an area which shall be placed under the general régime of free zones laid down in Articles 341 to 344, and shall be used for the direct transit of goods coming from or going to that State.

The delimitation of the area referred to in the preceding paragraph, its connection with existing railways, its equipment and exploitation, and in general all the conditions of its utilisation, including the amount of the rental, shall be decided by a Commission consisting of one delegate of Turkey, one delegate of Greece, and one delegate appointed by the League of Nations. These conditions shall be susceptible of revision every ten years in the same manner.

ARTICLE 351.

Free access to the Black Sea by the port of Batum is accorded to Georgia, Azerbaijan and Persia, as well as to Armenia. This right of access will be exercised in the conditions laid down in Article 349.

ARTICLE 352.

Subject to the decision provided for in Article 89, Part III (Political Clauses), free access to the Black Sea by the port of Trebizond is accorded to Armenia. This right of access will be exercised in the conditions laid down in Article 349.

In that event Armenia will be accorded a lease in perpetuity, subject to determination by the League of Nations, of an area in the said port which shall be placed under the general régime of free zones laid down in Articles 341 to 344, and shall be used for the direct transit of goods coming from or going to that State.

The delimitation of the area referred to in the preceding paragraph, its connection with existing railways, its equipment and exploitation, and in general all the conditions of its utilisation, including the amount of the rental, shall be decided by a Commission consisting of one delegate of Armenia, one delegate of Turkey, and one delegate appointed by the League of Nations. These conditions shall be susceptible of revision every ten years in the same manner.

SECTION III.—RAILWAYS.

CHAPTER I.—CLAUSES RELATING TO INTERNATIONAL TRANSPORT.

ARTICLE 353.

Subject to the rights of concessionaire companies, goods coming from the territories of the Allied Powers and going to Turkey and *vice versa*, or in transit through Turkey from or to the territories of the Allied Powers,

shall enjoy on the Turkish railways as regards charges to be collected (rebates and drawbacks being taken into account), facilities and all other matters, the most favourable treatment applied to goods of the same kind carried on any Turkish lines, either in internal traffic or for export, import or in transit, under similar conditions of transport, for example as regards length of route.

International tariffs established in accordance with the rates referred to in the preceding paragraph and involving through way-bills shall be established when one of the Allied Powers shall require it from Turkey.

ARTICLE 354.

From the coming into force of the Present Treaty Turkey agrees, under the reserves indicated in the second paragraph of this Article, to subscribe to the conventions and arrangements signed at Berne on October 14, 1890, September 20, 1893, July 16, 1895, June 16, 1898, and September 19, 1906, regarding the transportation of goods by rail.

If within five years from the date of the coming into force of the present Treaty a new convention for the transportation of passengers, luggage and goods by rail shall have been concluded to replace the Berne Convention of October 14, 1890, and the subsequent additions referred to above, this new convention and the supplementary provisions for international transport by rail which may be based on it shall bind Turkey, even if she shall have refused to take part in the preparation of the convention or to subscribe to it. Until a new convention shall have been concluded, Turkey shall conform to the provisions of the Berne Convention and the subsequent additions referred to above, and to the current supplementary provisions.

ARTICLE 355.

Subject to the rights of concessionaire companies, Turkey shall be bound to coöperate in the establishment of through-ticket services (for passengers and their luggage) which shall be required by any of the Allied Powers to ensure their communication by rail with each other and with all other countries by transit across the territories of Turkey; in particular Turkey shall, for this purpose, accept trains and carriages coming from the territories of the Allied Powers and shall forward them with a speed at least equal to that of her best long-distance trains on the same lines. The rates applicable to such through services shall not in any case be higher than the rates collected on Turkish internal services for the same distance, under the same conditions of speed and comfort.

The tariffs applicable under the same conditions of speed and comfort to the transportation of emigrants going to or coming from ports of the Allied Powers and using the Turkish railways shall not be at a higher kilometric rate than the most favourable tariffs (drawbacks and rebates

being taken into account) enjoyed on the said railways by emigrants going to or coming from any other ports.

ARTICLE 356.

Turkey shall not apply specially to such through services, or to the transportation of emigrants going to or coming from the ports of the Allied Powers, any technical, fiscal or administrative measures, such as measures of customs examination, general police, sanitary police, and control, the result of which would be to impede or delay such services.

ARTICLE 357.

In case of transport partly by rail and partly by internal navigation, with or without through way-bill, the preceding Articles shall apply to the part of the journey performed by rail.

CHAPTER II.—ROLLING-STOCK.

ARTICLE 358.

Turkey undertakes that Turkish waggons used for international traffic shall be fitted with apparatus allowing:

(1) of their inclusion in goods trains on the lines of such of the Allied Powers as are parties to the Berne Convention of May 15, 1886, as modified on May 18, 1907, without hampering the action of the continuous brake which may be adopted in such countries within ten years of the coming into force of the present Treaty and

(2) of the acceptance of waggons of such countries in all goods trains on the Turkish lines.

The rolling-stock of the Allied Powers shall enjoy on the Turkish lines the same treatment as Turkish rolling-stock as regards movement, upkeep and repair.

CHAPTER III.—TRANSFERS OF RAILWAY LINES.

ARTICLE 359.

Subject to any special provisions concerning the transfer of ports and railways, whether owned by the Turkish Government or private companies, situated in the territories detached from Turkey under the present Treaty, and to the financial conditions relating to the concessionaires and the pensioning of the personnel, the transfer of railways will take place under the following conditions:

(1) The works and installations of all the railroads shall be left complete and in as good condition as possible.

(2) When a railway system possessing its own rolling-stock is situated in its entirety in transferred territory, such stock shall be left complete with the railway, in accordance with the last inventory before October 30,

1918, and in a normal state of upkeep, Turkey being responsible for any losses due to causes within her control.

(3) As regards lines, the administration of which will in virtue of the present Treaty be divided, the distribution of the rolling-stock shall be made by agreement between the administrations taking over the several parts thereof. This agreement shall have regard to the amount of the material registered on those lines in the last inventory before October 30, 1918, the length of track (sidings included) and the nature and amount of the traffic. Failing agreement the points in dispute shall be settled by an arbitrator designated by the League of Nations who shall also if necessary specify the locomotives, carriages and wagons to be left on each section, the conditions of their acceptance, and such provisional arrangements as he may judge necessary to ensure for a limited period the current maintenance in existing workshops of the transferred stock.

(4) Stocks of stores, fittings and plant shall be left under the same conditions as the rolling-stock.

ARTICLE 360.

The Turkish Government abandons whatever rights it possesses over the Hedjaz railway, and accepts such arrangements as shall be made for its working, and for the distribution of the property belonging to or used in connection with the railway, by the Governments concerned. In any such arrangements the special position of the railway from the religious point of view shall be fully recognised and safeguarded.

CHAPTER IV.—WORKING AGREEMENTS.

ARTICLE 361.

When as a result of the fixing of new frontiers a railway connection between two parts of the same country crosses another country, or a branch line from one country has its terminus in another, the conditions of working, if not specifically provided for in the present Treaty, shall be laid down in a convention between the railway administrations concerned. If the administrations cannot come to an agreement as to the terms of such convention, the points of difference shall be decided by an arbitrator appointed as provided in Article 359.

The establishment of all new frontier stations between Turkey and the contiguous Allied States or new States, as well as the working of the lines between those stations, shall be settled by agreements similarly concluded.

ARTICLE 362.

A standing conference of technical representatives nominated by the Governments concerned shall be constituted with powers to agree upon the necessary joint arrangements for through traffic working, wagon ex-

change, through rates and tariffs and other similar matters affecting railways situated on territory forming part of the Turkish Empire on August 1, 1914.

SECTION IV.—MISCELLANEOUS.

CHAPTER I.—HYDRAULIC SYSTEM.

ARTICLE 363.

In default of any provision to the contrary, when as the result of the fixing of a new frontier the hydraulic system (canalisation, inundation, irrigation, drainage or similar matters) in a State is dependent on works executed within the territory of another State, or when use is made on the territory of a State, in virtue of pre-war usage, of water or hydraulic power the source of which is on the territory of another State, an agreement shall be made between the States concerned to safeguard the interests and rights acquired by each of them.

Failing an agreement, the matter shall be regulated by an arbitrator appointed by the Council of the League of Nations.

CHAPTER II.—TELEGRAPHS AND TELEPHONES.

ARTICLE 364.

Turkey undertakes on the request of any of the Allied Powers to grant facilities for the erection and maintenance of trunk telegraph and telephone lines across her territories.

Such facilities shall comprise the grant to any telegraph or telephone company nominated by any of the Allied Powers of the right:

(a) to erect a new line of poles and wires along any line of railway or other route in Turkish territory;

(b) to have access at all times to such poles and wires or wires placed by agreement on existing poles, and to take such steps as may be necessary to maintain them in good working order;

(c) to utilise the services of their own staff for the purpose of working such wires.

All questions relating to the establishment of such lines, especially as regards compensation to private individuals, shall be settled in the same conditions as are applied to telegraph or telephone lines established by the Turkish Government itself.

ARTICLE 365.

Notwithstanding any contrary stipulations in existing treaties, Turkey undertakes to grant freedom of transit for telegraphic correspondence and telephonic communications coming from or going to any one of the Allied Powers, whether contiguous with her or not, over such lines as may be most suitable for international transit and in accordance with the tariffs

in force. This correspondence and these communications shall be subjected to no unnecessary delay or restriction; they shall enjoy in Turkey national treatment in regard to every kind of facility, and especially in regard to rapidity of transmission. No payment, facility or restriction shall depend directly or indirectly on the nationality of the transmitter or the addressee.

Where in consequence of the provisions of the present Treaty lines previously entirely on Turkish territory traverse the territory of more than one State, pending the revision of telegraph rates by a new international telegraphic convention, the through charges shall not be higher than they would have been if the whole of the territory traversed had remained under Turkish sovereignty, and the apportionment of the through charges between the States traversed shall be dealt with by agreement between the administrations concerned.

CHAPTER III.—SUBMARINE CABLES.

ARTICLE 366.

Turkey agrees to transfer the landing rights at Constantinople for the Constantinople-Constanza cable to any administration or company which may be designated by the Allied Powers.

ARTICLE 367.

Turkey renounces on her own behalf and on behalf of her nationals in favour of the Principal Allied Powers all rights, titles or privileges of whatever nature over the whole or part of the Jeddah-Suakin and Cyprus-Latakia submarine cables.

If the cables or portions thereof transferred under the preceding paragraph are privately owned, the value, calculated on the basis of the original cost less a suitable allowance for depreciation, shall be credited to Turkey.

CHAPTER IV.—EXECUTORY PROVISIONS.

ARTICLE 368.

Turkey shall carry out the instructions given her, in regard to transport, by an authorised body acting on behalf of the Allied Powers:

(1) for the carriage of troops under the provisions of the present Treaty, and of material, ammunition and supplies for army use;

(2) as a temporary measure, for the transportation of supplies for certain regions, as well as for the restoration, as rapidly as possible, of the normal conditions of transport, and for the organisation of postal and telegraphic services.

SECTION V.—DISPUTES AND REVISION OF PERMANENT CLAUSES.

ARTICLE 369.

Unless otherwise specifically provided for in the present Treaty, disputes which may arise between interested Powers with regard to the interpretation and application of this Part of the present Treaty shall be settled as provided by the League of Nations.

ARTICLE 370.

At any time the League of Nations may recommend the revision of such of these Articles as relate to a permanent administrative régime.

ARTICLE 371.

The stipulations of Articles 328 to 334, 353 and 355 to 357 shall be subject to revision by the Council of the League of Nations at any time after three years from the coming into force of the present Treaty.

Subject to the provisions of Article 373 no Allied Power can claim the benefit of any of the stipulations of the Articles enumerated above on behalf of any portion of its territories in which reciprocity is not accorded in respect of such stipulations.

SECTION VI.—SPECIAL PROVISIONS.

ARTICLE 372.

Without prejudice to the special obligations imposed on her by the present Treaty for the benefit of the Allied Powers, Turkey undertakes to adhere to any General Conventions regarding the international régime of transit, waterways, ports or railways which may be concluded, with the approval of the League of Nations, within five years of the coming into force of the present Treaty.

ARTICLE 373.

Unless otherwise expressly provided in the present Treaty, nothing in this Part shall prejudice more extensive rights conferred on the nationals of the Allied Powers by the Capitulations or by any arrangements which may be substituted therefor.

PART XII.—LABOUR.

[Identical with Part XIII of the Treaty of Peace with Hungary, June 4, 1920, printed in the January, 1921, SUPPLEMENT (Vol. 15, p. 134)].

PART XIII.—MISCELLANEOUS PROVISIONS.

ARTICLE 415.

Turkey undertakes to recognise and to accept the conventions made or to be made by the Allied Powers or any of them with any other Power as to the traffic in arms and in spirituous liquors, and also as to the other subjects dealt with in the General Acts of Berlin of February 26, 1885, and of Brussels of July 2, 1890, and the conventions completing or modifying the same.

ARTICLE 416.

The High Contracting Parties declare and place on record that they have taken note of the Treaty signed by the Government of the French Republic on July 17, 1918, with His Serene Highness the Prince of Monaco, defining the relations between France and the Principality.

ARTICLE 417.

Without prejudice to the provisions of the present Treaty, Turkey undertakes not to put forward directly or indirectly against any Allied Power any pecuniary claim based on events which occurred at any time before the coming into force of the present Treaty.

The present stipulation will bar completely and finally all claims of this nature, which will be thenceforward extinguished, whoever may be the parties in interest.

ARTICLE 418.

Turkey accepts and recognises as valid and binding all decrees and orders concerning Turkish ships and goods and all orders relating to the payment of costs made by any Prize Court of any of the Allied Powers, and undertakes not to put forward any claim arising out of such decrees or orders on behalf of any Turkish national.

The Allied Powers reserve the right to examine in such manner as they may determine all decisions and orders of Turkish Prize Courts, whether affecting the property rights of nationals of those Powers or of neutral Powers. Turkey agrees to furnish copies of all the documents constituting the record of the cases, including the decisions and orders made, and to accept and give effect to the recommendations made after such examination of the cases.

ARTICLE 419.

With a view to minimising the losses arising from the sinking of ships and cargoes in the course of the war, and to facilitating the recovery of ships and cargoes which can be salvaged and the adjustment of the private claims arising with regard thereto, the Turkish Government undertakes to supply all the information in its power which may be of assistance to the Governments of the Allied Powers or to their nationals with regard

to vessels sunk or damaged by the Turkish naval forces during the period of hostilities.

ARTICLE 420.

Within six months from the coming into force of the present Treaty the Turkish Government must restore to the Governments of the Allied Powers the trophies, archives, historical souvenirs or works of art taken from the said Powers or their nationals, including companies and associations of every description controlled by such nationals, since October 29, 1914.

The delivery of the articles will be effected in such places and conditions as may be laid down by the Governments to which they are to be restored.

ARTICLE 421.

The Turkish Government will, within twelve months from the coming into force of the present Treaty, abrogate the existing law of antiquities and take the necessary steps to enact a new law of antiquities which will be based on the rules contained in the Annex hereto, and must be submitted to the Financial Commission for approval before being submitted to the Turkish Parliament. The Turkish Government undertakes to ensure the execution of this law on a basis of perfect equality between all nations.

ANNEX.

1.

"Antiquity" means any construction or any product of human activity earlier than the year 1700.

2.

The law for the protection of antiquities shall proceed by encouragement rather than by threat.

Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph 5, reports the same to an official of the competent Turkish Department, shall be rewarded according to the value of the discovery.

3.

No antiquity may be disposed of except to the competent Turkish Department, unless this Department renounces the acquisition of any such antiquity.

No antiquity may leave the country without an export licence from the said Department.

4.

Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

5.

No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorised by the competent Turkish Department.

6.

Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archæological interest.

7.

Authorisation to excavate shall only be granted to persons who show sufficient guarantees of archæological experience. The Turkish Government shall not, in granting these authorisations, act in such a way as to eliminate scholars of any nation without good grounds.

8.

The proceeds of excavations may be divided between the excavator and the competent Turkish Department in a proportion fixed by that Department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find.

ARTICLE 422.

All objects of religious, archæological, historical or artistic interest which have been removed since August 1, 1914, from any of the territories detached from Turkey will within twelve months from the coming into force of the present Treaty be restored by the Turkish Government to the Government of the territory from which such objects were removed.

If any such objects have passed into private ownership, the Turkish Government will take the necessary steps by expropriation or otherwise to enable it to fulfil its obligations under this Article.

Lists of the objects to be restored under this Article will be furnished to the Turkish Government by the Governments concerned within six months from the coming into force of the present Treaty.

ARTICLE 423.

The Turkish Government undertakes to preserve the books, documents and manuscripts from the Library of the Russian Archæological Institute at Constantinople which are now in its possession, and to deliver them to such authority as the Allied Powers, in order to safeguard the rights of Russia, reserve the right to designate. Pending such delivery the Turkish Government must allow all persons duly authorised by any of the Allied Powers to have free access to the said books, documents and manuscripts.

ARTICLE 424.

On the coming into force of the present Treaty, Turkey will hand over without delay to the Governments concerned archives, registers, plans, title-deeds and documents of every kind belonging to the civil, military, financial, judicial or other forms of administration in the transferred territories. If any one of these documents, archives, registers, title-deeds or plans is missing, it shall be restored by Turkey upon the demand of the Government concerned.

In case the archives, registers, plans, title-deeds or documents referred to in the preceding paragraph, exclusive of those of a military character, concern equally the administrations in Turkey, and cannot therefore be handed over without inconvenience to such administrations, Turkey undertakes, subject to reciprocity, to give access thereto to the Governments concerned.

The Turkish Government undertakes in particular to restore to the Greek Government the local land registers or any other public registers relating to landed property in the districts of the former Turkish Empire transferred to Greece since 1912, which the Turkish authorities removed or may have removed at the time of the evacuation.

In cases where the restitution of one or more of such registers is impossible owing to their disappearance or for any other reason, and whenever necessary for purposes of verification of titles produced to the Greek authorities, the Greek Government shall be entitled to take any necessary copies of the entries in the Central Land Registry at Constantinople.

ARTICLE 425.

The Turkish Government undertakes, subject to reciprocity, to afford to the Governments exercising authority over territory detached from Turkey, or of which the existing status is recognised by Turkey under the present Treaty, access to any archives and documents of every description relating to the administration of Wakfs in such territory, or to particular Wakfs, wherever situated, in which persons or institutions established in such territory are interested.

ARTICLE 426.

All judicial decisions given in Turkey by a judge or court of an Allied Power between October 30, 1918, and the coming into force of the new judicial system referred to in Article 136, Part III (Political Clauses) shall be recognised by the Turkish Government, which undertakes if necessary to ensure the execution of such decisions.

ARTICLE 427.

Subject to the provisions of Article 46, Part III (Political Clauses) Turkey hereby agrees so far as concerns her territory as delimited in

Article 27 to accept and to coöperate in the execution of any decisions taken by the Allied Powers, in agreement where necessary with other Powers, in relation to any matters previously dealt with by the Constantinople Superior Council of Health and the Turkish Sanitary Administration which was directed by the said Council.

ARTICLE 428.

As regards the territories detached from Turkey under the present Treaty, and in any territories which cease in accordance with the present Treaty to be under the suzerainty of Turkey, Turkey hereby agrees to accept any decisions in conformity with the principles enunciated below taken by the Allied Powers, in agreement where necessary with other Powers, in relation to any matters previously dealt with by the Constantinople Superior Council of Health or the Turkish Sanitary Administration which was directed by the said Council, or by the Alexandria Sanitary, Maritime and Quarantine Board.

The principles referred to in the preceding paragraphs are as follows:

(a) Each Allied Power will be responsible for maintaining and conducting in accordance with the provisions of international sanitary conventions its own quarantine establishments in any territory detached from Turkey which is placed under its control, whether the Allied Power be in sovereign possession, or act as mandatory or protector, or be responsible for the administration, of the territory in question;

(b) Such measures for the sanitary control of the Hedjaz pilgrimage as have hitherto been carried out by, or under the direction of, the Constantinople Superior Council of Health or the Turkish Sanitary Administration, or by the Alexandria Sanitary, Maritime and Quarantine Board, will henceforth be undertaken by the Allied Powers under whose sovereignty, mandate, protection or responsibility will pass those territories in which the various quarantine stations and sanitary establishments necessary for the execution of such measures are situated. The measures will be in conformity with the provisions of international sanitary conventions, and in order to secure complete uniformity in their execution each Allied Power concerned in the sanitary control of the pilgrimage will be represented on a co-ordinating Pilgrimage Quarantine Committee placed under the supervision of the Council of the League of Nations.

ARTICLE 429.

The High Contracting Parties agree that, in the absence of a subsequent agreement to the contrary, the Chairman of any Commission established by the present Treaty shall in the event of an equality of votes be entitled to a second vote.

ARTICLE 430.

Except where otherwise provided in the present Treaty, in all cases where the Treaty provides for the settlement of a question affecting particularly certain States by means of a special Convention to be concluded between the States concerned, it is understood by the High Contracting Parties that difficulties arising in this connection shall, until Turkey is admitted to membership of the League of Nations, be settled by the Principal Allied Powers.

ARTICLE 431.

Subject to any special provisions of the present Treaty, at the expiration of a period of six months from its coming into force the Turkish laws must have been modified and shall be maintained by the Turkish Government in conformity with the present Treaty.

Within the same period, all the administrative and other measures relating to the execution of the present Treaty must have been taken by the Turkish Government.

ARTICLE 432.

Turkey will remain bound to give every facility for any investigation which the Council of the League of Nations, acting if need be by a majority vote, may consider necessary, in any matters relating directly or indirectly to the application of the present Treaty.

ARTICLE 433.

The High Contracting Parties agree that Russia shall be entitled, on becoming a Member of the League of Nations, to accede to the present Treaty under such conditions as may be agreed upon between the Principal Allied Powers and Russia, and without prejudice to any rights expressly conferred upon her under the present Treaty.

The present Treaty, in French, in English, and in Italian, shall be ratified. In case of divergence the French text shall prevail, except in Parts I (Covenant of the League of Nations) and XII (Labour), where the French and English texts shall be of equal force.

The deposit of ratifications shall be made at Paris as soon as possible.

Powers of which the seat of the Government is outside Europe will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris that their ratification has been given; in that case they must transmit the instrument of ratification as soon as possible.

A first procès-verbal of the deposit of ratifications will be drawn up as soon as the Treaty has been ratified by Turkey on the one hand, and by three of the Principal Allied Powers on the other hand.

From the date of this first procès-verbal the Treaty will come into force between the High Contracting Parties who have ratified it.

For the determination of all periods of time provided for in the present Treaty this date will be the date of the coming into force of the Treaty.

In all other respects the Treaty will enter into force for each Power at the date of the deposit of its ratification.

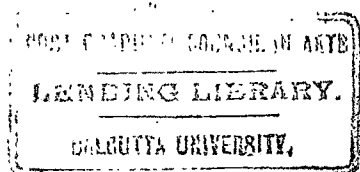
The French Government will transmit to all the signatory Powers a certified copy of the procès-verbaux of the deposit of ratifications.

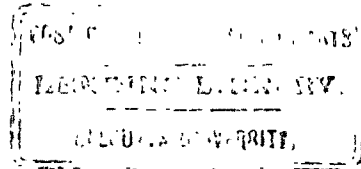
In faith whereof the above-named Plenipotentiaries have signed the present Treaty.

Done at Sèvres, the tenth day of August one thousand nine hundred and twenty, in a single copy which will remain deposited in the archives of the French Republic, and of which authenticated copies will be transmitted to each of the Signatory Powers.

GEORGE GRAHAME.
GEORGE H. PERLEY.
ANDREW FISHER.
GEORGE GRAHAME.
R. A. BLANKENBERG.
ARTHUR HIRTZEL.
A. MILLERAND.
F. FRANÇOIS-MARSAL.
JULES CAMBON.
PALÉOLOGUE.
BONIN.
MARIETTI.
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CONFERENCE ON THE LIMITATION OF ARMAMENT AND
PROBLEMS OF THE PACIFIC

By JAMES BROWN SCOTT

Editor-in-Chief

A conference of a group of Powers heretofore known as the Principal Allied and Associated Powers (the British Empire, France, Italy, Japan and the United States), to discuss the limitation of armament, and of these Powers, and Belgium, China, the Netherlands and Portugal, to consider Pacific and Far Eastern problems, will open in the City of Washington on November 11, 1921.

Armament alone would not have fully justified the call of a conference. Armament does not exist for itself, and it is not an end. It is a means to an end, the end being the determination of one or more Powers to make the will of the state or states having armament prevail.

The general interest of the Powers, and the special interest of some, centers in the Pacific. Hence, Secretary of State Hughes, speaking for and by the direction of President Harding, added in his first note to the Principal Allied and Associated Powers:

It is manifest that the question of limitation of armament has a close relation to Pacific and Far Eastern problems, and the President has suggested that the Powers especially interested in these problems should undertake in connection with this conference the consideration of all matters bearing upon their solution with a view to reaching a common understanding with respect to principles and policies in the Far East.

This meant that China was to be invited to the Conference, and it was so stated.

The four Powers thus sounded by Secretary Hughes were willing to attend the proposed conference. China was more than willing. They were therefore invited to confer with the United States and one another, on armament, and all with China on the problems of the Pacific. Belgium, the Netherlands and Portugal let it be known that they had interests in the conference which could not be overlooked by themselves, and should not be by the conferees. No one who has not forgotten the exciting month of August, 1914, would deny to Belgium a very present interest in the armament of its neighbors, although some people questioned its right to discuss the limitation of armament of the military nations. And Holland and Portugal are Far Eastern Powers. By common consent these three Powers were invited to take part in the discussion of the Pacific problems.

Therefore, on August 11th, Secretary Hughes invited the Principal Allied and Associated Powers to a conference on both subjects, and China on Pacific problems, to which were added, on October 4th, Belgium, the Netherlands and Portugal to send representatives to Washington to confer, on November 11, 1921, on the subjects contained in an agenda agreed to by the principal participants, and made public on September 21st:

LIMITATION OF ARMAMENT.

One. Limitation of naval armament, under which shall be discussed

- (a) Basis of limitation
- (b) Extent
- (c) Fulfillment.

Two. Rules for control of new agencies of warfare.

Three. Limitation of land armament.

PACIFIC AND FAR EASTERN QUESTIONS.

One. Questions relating to China.

First: Principles to be applied.

Second: Application.

- Subjects:
- (a) Territorial integrity
 - (b) Administrative integrity
 - (c) Open door,—equality of commercial and industrial opportunity.
 - (d) Concessions, monopolies or preferential economic privileges.
 - (e) Development of railways, including plans relating to Chinese Eastern Railway.
 - (f) Preferential railroad rates.
 - (g) Status of existing commitments.

Two. Siberia.

(similar headings)

Three. Mandated Islands.

(unless questions earlier settled)

Electrical communications in the Pacific.

Under the heading of "Status of existing commitments" it is expected that opportunity will be afforded to consider and to reach an understanding with respect to unsettled questions involving the nature and scope of commitments under which claims of rights may hereafter be asserted.

Why was the conference called? The invitation sent to the Principal Allied and Associated Powers for the armament side, and to China for the Pacific phase of the conference, make the purpose of the United States abundantly clear. The notes are so succinct and pointed that they are their own best summary.

The invitation of August 11th to the four big Powers was thus worded:

Productive labor is staggering under an economic burden too heavy to be borne unless the present vast public expenditures are greatly reduced. It is idle to look for stability, or the assurance of social justice, or the security of peace, while wasteful and unproductive outlays deprive effort of its just reward and defeat the reasonable expectation

of progress. The enormous disbursements in the rivalries of armaments manifestly constitute the greater part of the encumbrance upon enterprise and national prosperity; and avoidable or extravagant expense of this nature is not only without economic justification but is a constant menace to the peace of the world rather than an assurance of its preservation. Yet there would seem to be no ground to expect the halting of these increasing outlays unless the Powers most largely concerned find a satisfactory basis for an agreement to effect their limitation. The time is believed to be opportune for these Powers to approach this subject directly and in conference; and while, in the discussion of limitation of armament, the question of naval armament may naturally have first place, it has been thought best not to exclude questions pertaining to other armament to the end that all practicable measures of relief may have appropriate consideration. It may also be found advisable to formulate proposals by which in the interest of humanity the use of new agencies of warfare may be suitably controlled.

It is, however, quite clear that there can be no final assurance of the peace of the world in the absence of the desire for peace, and the prospect of reduced armaments is not a hopeful one unless this desire finds expression in a practical effort to remove causes of misunderstanding and to seek ground for agreement as to principles and their application. It is the earnest wish of this Government that through an interchange of views with the facilities afforded by a conference, it may be possible to find a solution of Pacific and Far Eastern problems, of unquestioned importance at this time, that is, such common understandings with respect to matters which have been and are of international concern as may serve to promote enduring friendship among our peoples.

It is not the purpose of this Government to attempt to define the scope of the discussion in relation to the Pacific and Far East, but rather to leave this to be the subject of suggestions to be exchanged before the meeting of the conference, in the expectation that the spirit of friendship and a cordial appreciation of the importance of the elimination of sources of controversy, will govern the final decision.

To China the invitation consisted of the two paragraphs dealing with the problems of the Pacific, omitting the paragraph devoted to the burden of armaments.

For the conference on Pacific and Far Eastern questions there are precedents, for interested nations have often come together to discuss and have reached agreements on their common interests, and although the agreements have been temporary and have given way to other and subsequent agreements, peace has often been preserved through them. At least war has been averted because of them. May it be so in the present case!

For the conference of the nations on the limitation of armament there is but one precedent. The first of the two Hague Conferences was called in 1898, for this purpose. The message of the Czar of all the Russias,—for it was he who sounded the note of alarm in 1898, just as the President of the United States takes the initiative in 1921—speaks of “a possible reduction of the excessive armaments which weigh upon all nations.” It suggests that the then moment was “very favorable for seeking, by means of international discussion, the most effective means of insuring to all peoples the benefits of a real and lasting peace, and above all of limiting the progressive development of existing armaments.”

The message then states the appalling consequences of the progressive increase of armament, and the duty of the nations to call a halt:

The ever-increasing financial charges strike and paralyze public prosperity at its source.

The intellectual and physical strength of the nations, their labor and capital, are for the most part diverted from their natural application and unproductively consumed.

Hundreds of millions are spent in acquiring terrible engines of destruction, which though to-day regarded as the last word of science are destined to-morrow to lose all value in consequence of some fresh discovery in the same field.

National culture, economic progress, and the production of wealth are either paralyzed or perverted in their development. Moreover, in proportion as the armaments of each Power increase, so do they less and less attain the object aimed at by the Governments.

Economic crises, due in great part to the system of amassing armaments to the point of exhaustion, and the continual danger which lurks in this accumulation of war material, are transforming the armed peace of our days into a crushing burden which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of affairs be prolonged, it will inevitably lead to the very cataclysm which it is desired to avert, and the impending horrors of which are fearful to every human thought.

In checking these increasing armaments and in seeking the means of averting the calamities which threaten the entire world lies the supreme duty to-day resting upon all states.¹

After consulting the Powers accredited to St. Petersburg, which were alone asked to be represented at the conference, a circular note was sent by the Russian Minister for Foreign Affairs, enlarging the scope by including the pacific settlement of disputes between the nations. This note thus stated the subjects to be submitted for international discussion, in so far as they related to armaments:

1. An understanding stipulating the non-argumentation, for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them; preliminary study of the ways in which even a reduction of the afore-said effectives and budgets could be realized in the future;

2. Interdiction of the employment in armies and fleets of new firearms of every description and of new explosives, as well as powder more powerful than the kinds used at present, both for guns and cannons;

3. Limitation of the use in field fighting of explosives of a formidable power, such as are now in use, and prohibitions of the discharge of any kind of projectile or explosive from balloons or by similar means;

4. Prohibition of the use in naval battles of submarine or diving torpedo boats, or of other engines of destruction of the same nature; agreement not to construct in the future war-ships armed with rams;

5. Adaptation to naval war of the stipulations of the Geneva Convention of 1864, on the base of the additional articles of 1868;

6. Neutralization for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles;

7. Revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified.²

¹ Documents relating to the Program of the First Hague Conference laid before the Conference by the Netherland Government. Translation published by the Carnegie Endowment for International Peace (1921), p. 1.

² *Ibid.*, p. 3.

The Hague was chosen as the seat of the conference. The delegates of twenty-six states met there on May 18, and adjourned on July 27, 1899.

The discussions on armament and its limitation were long and animated, but no agreement was reached on the subject which had brought the delegates together. The laws and customs of warfare were codified, the principles of the Geneva Convention were extended to naval warfare, a pacific settlement convention was adopted. In so far as the limitation of armament was concerned, the conference failed, but the by-products, so to speak, more than justified its calling.

Secretary Hughes has taken no chances. The burdens of armament and the means of its limitation are to be discussed, and an agreement reached, if possible, which is the supreme duty today as it was then, and has been for centuries. The delegates are not to go away empty-handed. The problems of the Pacific are many and varied, and the delegates may succeed there, even if their labors in the more thorny field of armament may disappoint the public, which overlooks the difficulties in the way in its eagerness to reach the desired goal.

It is difficult to get nations to agree to limit their respective armaments. It would be difficult, judging from the past, to have them agree to any control or supervision of their actions by commissions or commissioners. An incident related by the late Alfred H. Fried in his *Manual of the Peace Movement*, concerning Frederick the Great and the Chancellor of Austria, is not without interest:

It was for the first time in history that a European Government presented to another Government a proposal for the decrease of armaments when soon after the conclusion of the Seven Years' War the Austrian Chancellor, Prince Kaunitz, made such a proposal to the Prussian ambassador in Vienna. Kaunitz said that similarly to the Monasteries the large standing armies which the Powers maintain are injurious to the human race and in the course of time would threaten it with "complete destruction." An end should now be made to this "sad outlook," this "internal war" which the princes were waging against each other in times of peace, and the means for doing so should be disarmament. He said that he had often considered the difficulties opposing the execution of so beneficial a work and that according to his opinion the greatest obstacle was the determination of the number of troops for the individual Powers. He, therefore, proposed that Prussia and Austria should take the recently concluded Hubertsburg Peace as a basis, dismiss three-fourths of the soldiers who were at that time under the colors, and for the purpose of controlling one another allow commissioners to be present at the review of troops of the other Power.

When the king received this report of his ambassador he was of the opinion that the proposal of Kaunitz had been dictated merely by the then prevailing financial embarrassment of the Austrian monarchy, since it was difficult for the latter to maintain all the troops which it had under the colors at that time. Confidentially he continued that he could not consider this proposal for disarmament because in a crisis the Austrians could assemble their army more quickly than he. In case Kaunitz should return to his proposal, Frederick finally instructed his ambassador to declare, in a fitting manner, that this project seemed to him almost to resemble that of the Abbé St. Pierre and that

the Powers would hardly be able to come to an agreement on the number of troops to be maintained.

In 1769 Emperor Joseph II again referred to the proposal of Kaunitz upon the occasion of his meeting with Frederick in Neisse. He was of the opinion that the number of troops in the army should be decreased in order to alleviate the burdens of the people, but the king again refused.

Thus, the first attempt at an agreement concerning armaments failed.³

There have, however, been two agreements—one between Great Britain and the United States, the other between Argentina and Chile. The first was in 1817, and stands intact; the second was of yesterday, and has expired—not having been prolonged or renewed.

Great Britain and the United States agreed that:

The naval force to be maintained upon the American lakes by his Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is—

On Lake Ontario, to one vessel not exceeding one hundred tons burden, and armed with one eighteen-pound cannon.

On the Upper lakes, to two vessels not exceeding like burden each, and armed with like force.

On the waters of Lake Champlain, to one vessel not exceeding like burden, and armed with like force.

All other armed vessels on these lakes shall be forthwith dismantled, and no other vessels of war shall be there built or armed.

If either party should be hereafter desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The naval force so to be limited shall be restricted to such services as will, in no respect, interfere with the proper duties of the armed vessels of the other party.⁴

The Rush-Bagot agreement still stands, a tribute to the wisdom of the statesmen who proposed it at the end of the War of 1812 between their respective countries, and an example of good faith between nations, and its possibilities.

The material articles of the convention between Chile and the Argentine Republic respecting the limitation of naval armaments are as follows:

Article 1. With the view of removing all motive for uneasiness or resentment in either country, the Governments of Chile and the Argentine Republic desist from acquiring the vessels of war which they have in construction, and from henceforth making new acquisitions.

Both Governments agree, moreover, to reduce their respective fleets, for which object

³ "Frederick the Great and the Idea of Peace," from the still unpublished Part II (second edition) of Alfred H. Fried's *Handbuch der Friedensbewegung*. *Die Friedens-Warte*, January, 1912, v. 14, p. 1.

⁴ Agreement effected by exchange of notes concerning naval force on the Great Lakes. Proclaimed by the President, April 28, 1818. Malloy's *Treaties, Conventions, etc.*, between the United States and Other Powers, 1776-1909, Washington, 1910, v. i, p. 628.

they will continue to exert themselves until they arrive at an understanding which shall establish a just balance (of strength) between the said fleets. This reduction shall take place within one year, counting from the date of exchange of ratification of the present convention.

Article 2. The two Governments bind themselves not to increase, without previous notice, their naval armaments during five years; the one intending to increase them shall give the other eighteen months' notice. It is understood that all armaments for the fortification of the coasts and ports are excluded from this agreement, and any floating machine destined exclusively for the defense of these, such as submarines, etc., can be acquired.

Article 3. The two signatory parties shall not be at liberty to part with any vessels, in consequence of this convention, in favor of countries having questions pending with one or the other.

Article 4. In order to facilitate the transfer of pending contracts, both Governments bind themselves to prolong for two months the term stipulated for the delivery of the vessels in construction, for which purpose they will give the necessary instructions immediately this convention has been signed.⁵

In addition to the Hague precedent of 1899, there exists what may be called a mandate imposed by the Congress of the United States upon the President in office at the conclusion of peace. In the Act making appropriations for the naval service of the United States, approved August 29, 1916,⁶ the policy of the United States is declared to be "to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided." Recognizing the connection between armament and war, the Act went on to say that this country "looks with apprehension and disfavor upon a general increase of armament throughout the world." The difficulty of the problem, however, was not hidden from the Congress, which proceeded immediately to say that the United States "realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable Power must maintain a relative standing in military strength." Then comes the mandate. "In view of the premises, the President is authorized and requested to invite, at an appropriate time, not later than the close of the war in Europe,"—our war ended with the treaties of 1921 with Germany, Austria and Hungary—"all the great Governments of the world to send representatives to a conference . . . to consider the question of disarmament and submit their recommendation to their respective Governments for approval."

The approaching conference is big with possibilities. The limitation of armament; the settlement of Pacific problems; and perhaps an agreement on a workable association of nations, for does not the invitation say that "there can be no final assurance of the peace of the world in the absence of the desire for peace, and the prospect of reduced armaments is not a

⁵ The Proceedings of the Hague Peace Conferences. Translations of Official Texts, The Conference of 1907, vol. 1, Plenary Meetings of the Conference. Published by The Carnegie Endowment for International Peace. New York, 1920, p. 120.

⁶ U. S. Statutes at Large, Vol. 39, p. 618.

hopeful one *unless this desire finds expression in a practical effort to remove causes of misunderstanding and to seek ground for agreement as to principles and their application.*"

In any event, it is a heartening spectacle to see a return to the old order of things; a conference of nations called in peace to consider the ways in which peace may be conserved and war averted, and meeting in peace and in an atmosphere of peace.

It is assuredly the part of wisdom to take counsel of the immediate past to apply to the problems of the present the principles which have proved efficacious in the past; to build upon the foundations of the past with a defter hand and in a more generous and chastened spirit. The temple of peace is still in the distance; and the approach to it runs through conferences like the two which have already assembled at The Hague.

THE UNITED STATES AND THE LEAGUE OF NEUTRALS OF 1780

BY WILLIAM S. CARPENTER

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The idea of a league of nations is one with which the United States has been familiar since the very beginning of its history. The form in which it first appeared to this country was in the Armed Neutrality of 1780. The purpose of this league, which has sometimes been called the League of Neutrals, was the protection of neutral trade. Having its origin at the court of Catherine II, Empress of Russia, the Armed Neutrality set forth a body of rules respecting the freedom of commerce in time of war which must prove highly favorable to the United States when that country, in a future conflict, should change its status from that of a belligerent to that of a neutral. It is not surprising, therefore, that the inclusion of the United States among the membership of the league which the Tsarina was forming to enforce these principles was not without its advocates.

The United States had already occupied a most advanced position with respect to the maritime rights of neutrals. To maintain free intercourse with the countries of Europe amid their inevitably recurring wars was recognized to be a primary interest on this side of the Atlantic. Clear distinctions between the maritime rights of neutrals and those of belligerents were asserted from the outset and adhered to with remarkable consistency, despite many temptations to turn aside for temporary advantage.¹

At the beginning of the American Revolution the colonists appreciated that to cope successfully with the maritime power of Great Britain they must resort to reprisals on the sea. As early as November, 1775, the Continental Congress recommended to the legislatures of the colonies the establishment of courts to determine cases of capture. From the decisions of these tribunals, "appeals were to be allowed to Congress, or to such persons as they may appoint for the trial of appeals."²

Courts were established in all of the States and, except in New York

¹ For a study of the American attitude towards capture at sea, see H. S. Quigley, this JOURNAL, Vol. 11, pp. 820-837.

² Jour. Cont. Cong., III, pp. 373-376; J. C. Bancroft Davis, Federal Courts before the Constitution, 131 U. S. Reports, Appendix, p. xxi; Jameson, Essays in the Constitutional History of the United States, p. 11.

where the maritime counties remained in the hands of the enemy, continued active throughout the war.³ But in many of the States the right of appeal was curtailed by statute. The legislatures of New Hampshire and Massachusetts insisted that only in cases in which the capture was made by an armed vessel fitted out at the expense of the United States should an appeal be allowed to Congress. In all other cases the right of appeal lay to the supreme court of the State.⁴ This jealousy on the part of the States would have led to unfortunate results had not the acts been annulled to permit a right of appeal to Congress in all cases of maritime capture.⁵ As a matter of fact, Congress found cause to complain that the curtailment of the right of appeal "has a very dangerous tendency to interrupt the peace, safety, and union of the United States, and is in direct violation of the resolve of Congress which grants an appeal in all cases."⁶ To quiet any possible dissatisfaction with the character of the appellate tribunal, a permanent court of appeals in cases of capture was established by Congress on January 15, 1780.⁷

Not less unsatisfactory than the limitation upon the right of appeal was the establishment of trial by jury in the prize courts. If the former militated against uniformity in the administration of the law, the latter often resulted in positive denial of justice. A superficial glance at the records of the cases decided in the Pennsylvania court in 1776 will show how willing patriotic juries were to condemn to the captors when there was the slightest evidence that the ship or cargo was hostile.⁸ But "the temper of the people was such and so greatly were they enraged at the corruption of former admiralty courts, that a court of this species without a jury would have met their universal disapprobation."⁹

It was not long before the inability or the refusal of the juries to pass fairly and intelligently upon the facts in prize cases attracted the attention of Congress. In January, 1780, it was resolved "that it be recommended to the States to authorize the courts of admiralty therein . . . to decide without a jury in all cases where the civil law, the law of nations, and

³ In 1776, when a court could not be conveniently convened in New Jersey, the legislature by statute proceeded to condemn a vessel "said to be British property," which had been captured by the militia. Laws of N. J., 1776, p. 17. The New York Provincial Congress, on June 28, 1776, appointed a committee to take charge of prizes until condemnation. Am. Archives, Ser. 4, VI, p. 1435.

⁴ Davis, 131 U. S. Reports, Appendix, p. xxiii; *Penhallow v. Doane*, 3 Dallas 54.

⁵ Acts and Resolves of the Province of Mass. Bay, V, p. 1077.

⁶ Jour. Cont. Cong., XII, p. 1023.

⁷ *Ibid.*, XVI, pp. 61-64.

⁸ MSS. in the office of the Clerk of the U. S. District Court at Philadelphia. The case of *McAroy v. Thistle and Cargo* is especially in point. The judgment of the State court was promptly reversed by Congress. The case of *Griffin v. Sloop George*, condemned in the New Jersey court in 1778, was of the same character. *Jennings v. Carson*, 4 Cranch 2.

⁹ Austin, *Life of Elbridge Gerry*, I, p. 313.

the resolutions of Congress are the rules of their proceeding and adjudication."¹⁰ Pennsylvania led the States in the repeal of the statutes authorizing trial by jury in the prize courts, enacting on March 8, 1780, a new admiralty law which left the determination of such causes to the judge.¹¹

Obviously the interests of neutral trade would have been best served by a strict adherence to the principle that "free ships make free goods." This rule had been growing in favor since the middle of the seventeenth century, especially among those nations having small naval forces. But in 1776 the principle was one of conventional stipulation, and not a rule of international law.¹² Nevertheless, Congress in its draft of a plan for treaties to be made with neutral Powers included the principle that "free ships shall make free goods," together with the converse proposition, that "enemy's ships shall make enemy's goods." That there were limits beyond which the principle that the flag covers the cargo would not be urged is evident from the marginal note by James Wilson: "This to be obtained if possible; but not to be insisted upon so as to break off the treaty."¹³

The rule, however, suited the interest of France, with whom the United States was to frame its first treaty. The two maxims became Articles XIV and XXIII of the treaty of amity and commerce, concluded on February 6, 1778.¹⁴ They were proposed six months later to Holland, and thereafter formed a rule which the United States sought to incorporate in its conventional agreements.

The willingness of Congress to adopt rules which would relieve neutrals from many of the annoyances of visit and search could safely be carried out only through treaty stipulations. The adherence of Great Britain to the rule of the *Consolato del Mare*, that enemy's goods in neutral vessels might be seized while neutral goods on board vessels of the enemy should go free, was an obstacle to the adoption generally of the less rigorous principle. In the resolutions of Congress and the decisions of the prize courts of the States, neutrals continued to receive the same treatment accorded them in the admiralty courts of Great Britain.

¹⁰ Jour. Cont. Cong., XVI, p. 62.

¹¹ Hopkinson: Miscellaneous Essays and Occasional Writings, III, p. 24.

¹² Manning: Law of Nations (ed. Amos), pp. 325-337; Phillimore: Commentaries (3rd ed.), III, p. 335 ff. In 1752, Frederick II of Prussia, in the Silesian Loan Controversy, contended that the principle of "free ships, free goods," must be admitted as a rule of international law, but this was successfully controverted by the British commissioners. Martens, Causes célèbres, II, pp. 1-88. The best discussion of this subject is to be found in Ward, Relative Rights and Duties of Belligerent and Neutral Powers in Maritime Affairs (London 1801), pp. 1-172. Practically all the later English writers have simply restated the position occupied by Ward. For an attempt to establish the principles of the Armed Neutrality as rules of international law, see Barton, Freedom of Navigation (Philadelphia, 1802).

¹³ Jour. Cont. Cong., V, pp. 581, 585.

¹⁴ Martens, Recueil des Traites, II, pp. 594, 597.

Early in 1776 privateering was authorized by Congress, and on October 14, 1777, it was resolved "that any vessel or cargo, the property of any British subject, . . . brought into the harbors of the United States . . . be adjudged lawful prize."¹⁵ Privateering flourished, and there were few days upon which the judges of the courts of admiralty were idle. In less than two years, Timothy Pickering in Massachusetts condemned over 150 vessels, and the convenient harbor of the Delaware saw many captured vessels drop their unwilling anchors to await the action of Judge Ross at Philadelphia.¹⁶

Although the legitimate interests of neutrals commanded the respect of Congress, the captains of privateers on occasions transgressed the law. The career of Captain Cunningham was notorious on account of his irregularities. In 1777 he seems to have contented himself with the capture of British vessels.¹⁷ But in 1778 he molested a number of Portuguese vessels, nearly embroiling the United States with the court of Lisbon.¹⁸ In November of the same year, in command of the *Revenge*, he captured a Swedish ship bound from London to Teneriffe with a cargo of Spanish property. This action gave great offense to Spain, and Captain Cunningham was forbidden entrance to the ports of the kingdom. Arthur Lee assured the Spanish ambassador at Paris in this instance "that, upon its being made to appear in the admiralty courts in America that the property is neutral, it will be restored, with such damages as are just."¹⁹

These derogations from the instructions of Congress met with the immediate disapproval of the American Government. The captains of armed vessels were warned to respect the rights of neutrals, and to conform to the requirements of the laws of nations and the resolutions of Congress.²⁰ The same warning was repeated in a proclamation of May 2, 1780, after further protests on the part of neutrals whose commerce had suffered illegal interference at the hands of privateers.²¹

In the State admiralty courts, the decisions reflect the earnest desire to adjudicate in accordance with the rules of international law. The rule that neutral vessels fallen into the hands of the enemy do not lose their innocent character upon recapture was upheld in the Pennsylvania court and was approved by Congress.²² In 1780, the rule that neutral goods in

¹⁵ Jour. Cont. Cong., IV, p. 253; IX, p. 802.

¹⁶ Pickering, *Life of Timothy Pickering*, I, p. 79; Penna. Archives, VII, p. 558.

¹⁷ Diplomatic Correspondence of the Am. Revolution (ed. Wharton), II, p. 322; Annual Register (1778), p. 37.

¹⁸ Dip. Corr. Am. Rev. (ed. Wharton), II, p. 784.

¹⁹ *Ibid.*, II, p. 840.

²⁰ See instructions of the American Commissioners, Nov. 21, 1777 (Dip. Corr. Am. Rev. (ed. Wharton), II, p. 425), and proclamation of Congress, May 9, 1778 (Jour. Cont. Cong., XI, p. 486).

²¹ Jour. Cont. Cong., XVI, pp. 406-408.

²² *Geddes v. The Golden Rose*, Hopkinson, III, p. 19. The decision in this case ran counter to that of the Massachusetts court in *Tucker v. LeVern and Cargo*, DeValnais

enemy's vessels should go free was recognized by Judge Hopkinson, having already been declared by a committee of Congress in the previous year.²³ At the same time, it had become the established practice to condemn enemy's goods when found in neutral vessels, upon paying the freight to the carrier.²⁴ The doctrines of the United States with respect to neutral commerce were thus on a parity with those of Great Britain when Catherine II, on February 28, 1780, issued her proclamation declaring the rights of neutrals upon the sea.

The Empress of Russia desired to free neutral trade from the interference of the belligerents to which her nationals had so frequently been subjected. Her declaration sought to overturn the "Rule of 1756" and secure for neutrals the freedom of navigation even to the ports and upon the coasts of the belligerents; it restricted the category of contraband to munitions and the essential instruments of war; it asserted as an established rule of international law the principle that "free ships make free goods," and set forth a new theory of blockade.²⁵ Chief interest centers on the second proposition, that "free ships shall make free goods." This principle had already been asserted in some quarters, apart from conventional agree-

Claimant. In the latter case, the jury condemned a French vessel which had been captured by the British and from them recaptured by the libellant. DeValmais appealed to the Court of Appeals in Cases of Capture, where the judgment of the lower court was reversed. The case will be found among the MSS. of the Court of Appeals in the office of the Clerk of the United States Supreme Court. On the subject of recaptures, see G. F. de Martens, *Essay on Privateers and Captures*, Eng. trans. (London, 1801), pp. 107-214.

²³ *Walker v. Albion*, Hopkinson, III, p. 42; Penna. Archives, VIII, p. 491. On July 15, 1779, Francis Hopkinson became judge of the admiralty court in Pennsylvania following the death of Judge Ross. In the case of *Cleaveland v. Ship Valenciano*, Congress affirmed the decree of the Massachusetts court condemning the ship as hostile, but freed a part of the cargo owned by Spanish subjects. See cases in the office of the Clerk of the U. S. Supreme Court.

²⁴ For an example, see case of *Cabot v. Neustra Senora de Merced* among the MSS. of the Court of Appeals. The admiralty court in Massachusetts freed the Spanish-owned vessel, but condemned the British property. Upon appeal, Congress affirmed the decision of the State court, November 6, 1779. See also *Dip. Corr. Am. Rev.* (ed. Wharton), VII, p. 63; Franklin, *Works* (ed. Bigelow), III, pp. 742, 801.

²⁵ Martens, *Recueil*, III, p. 158; Berghohm, *Die Bewaffnete Neutralität*, pp. 30-50. The treaties of Utrecht, 1713, and numerous other conventions had asserted the maxims "free ships make free goods" and "enemy's ships make enemy's goods." (Calvo, IV, p. 414; Wheaton, *History*, p. 106 ff.; Atherley-Jones, *Commerce in War*, pp. 284-298). But among Christian Powers the first of these principles had never been accepted unless accompanied by the second. (Manning, *Law of Nations* (ed. Amos), p. 335.) Catherine II is therefore supposed to have asserted a principle entirely novel. (Manning, p. 335; Phillimore (3rd ed.), III, p. 302 ff.; Bowles, *Declaration of Paris*, pp. 77-79; Lampredi, *Du Commerce des Neutres en Temps de Guerre*, French trans., Italian ed. 1788 (Paris, 1802); Kent, *Commentaries*, I, pp. 126, 131). On the other hand, Kleen, *Lois et Usages de la Neutralité*, pp. 20-21, holds that the Armed Neutrality intended simply to renew the Utrecht principle and to establish the doctrine that the quality of the vessel determines the quality of the cargo.

ment, and had been extended to all neutrals as a privilege by the French ordinance of July 26, 1778.²⁶ But what Catherine II claimed as a right of neutrals under international law, the prize courts of both Great Britain and the United States had denied in favor of the older principle of the *Consolato del Mare*.

The proclamation of the Tsarina found a ready response among the Powers of northern Europe, and its principles formed the basis of the Armed Neutrality of 1780. Within eighteen months Denmark, Sweden, Holland, Prussia and Austria had given their adhesion to the declaration.²⁷ France and Spain gave their warm approval.²⁸ Great Britain alone remained firm in her determination to follow the rules of international law by which her conduct had hitherto been guided.²⁹

The neutrals of northern Europe began to arm for the protection of their commerce in accordance with the principles to which they had subscribed. This action was already known to the American commissioners in France when, in May, 1780, Captain Dowlin of the American privateer *Black Prince*, sailed into the harbor of Cherbourg, bringing as prize the Dutch ship *Flora* laden with a cargo of British property. Franklin, called upon to decide the fate of the vessel and her cargo, was uncertain what to do. He wrote to Dumas, the American agent at The Hague, for advice. Dumas advised that the vessel and her cargo be freed, but pointed out that the condemnation of the cargo was entirely possible in the absence of any treaty with The Netherlands stipulating for the freedom of enemy's goods in neutral bottoms.³⁰

After consultation with John Adams and Francis Dana, Franklin decided to free the *Flora*, but to condemn the cargo, paying the Dutch captain the freight.³¹ At the same time, he gave orders to the American privateers cruising in European waters

not to bring in any more Dutch vessels, although charged with enemy's goods, unless contraband. All the neutral States of Europe seem at present disposed to change what had before been deemed the law of nations, to wit, that an enemy's property may be taken wherever found; and to establish a rule, that free ships shall make free goods. This rule is itself so reasonable, and of a nature to be so beneficial to mankind, that I cannot but wish it may become general. And I make no doubt that the Congress will agree to it, in as full an extent as France and Spain. In the meantime, and until I have received their orders on the subject, it is my inten-

²⁶ Recueil des Anciennes Lois Françaises, XXV, pp. 366-370.

²⁷ Martens, Recueil, II, pp. 103, 110, 117, 130, 171. Portugal, on July 13, 1782, and the Two Sicilies, on February 10, 1783, accepted the principles of the Armed Neutrality. Martens, Recueil, II, p. 208; III, p. 274.

²⁸ *Ibid.*, pp. 162, 164.

²⁹ *Ibid.*, III, p. 160; Annual Register (1780), p. 349.

³⁰ Franklin MSS., May, 1780. Library Am. Philos. Society.

³¹ Dip. Corr. Am. Rev. (ed. Wharton), III, pp. 682, 742, 769.

tion to condemn no more English goods found in Dutch vessels, unless contraband. . . .³²

Nevertheless, the decision of Franklin condemning the cargo of the *Flora* did not pass unnoticed at Versailles. Vergennes, the foreign minister of Louis XVI, was unwilling that the American ally should pursue a policy different from that of France, when to do so was to stir the wrath of those with whom he would be on friendly terms.³³ Upon being assured that Franklin had acted upon the law as settled in America, Vergennes urged upon Congress the adoption of the same rules as the French upon the subject. Writing to Luzerne, the French representative at Philadelphia, he said:

It is all the more important that the Americans conform their maritime regulations to our system, which is that of neutral Powers, since they will thereby conciliate themselves with these same Powers (the league of the Armed Neutrality), and it is all the more necessary that Congress give promptly to its privateers orders which shall be similar to those which have permitted them to stop neutral vessels laden with English goods, which have given rise to complaints against the United States, and not less damaging to their interests.³⁴

The accession of the United States to the principles of the Armed Neutrality had already been urged by the American Commissioners in Europe. John Adams pointed out that such action would be hurtful only to England and would be especially helpful to the United States.³⁵ The benevolent principles of the neutral league were so well suited to the temper of Franklin that he repeatedly suggested to Congress that they be adopted as a basis of instructions to American cruisers.³⁶

Congress was prompt to act upon the advice of Vergennes. On September 26, 1780, Samuel Adams reported a resolution according to the principles of the Russian declaration with slight modifications. But action on the proposition was postponed, and a substitute was introduced which bound the United States unreservedly to the acceptance of the rules of the Armed Neutrality.³⁷ In the latter form the resolution passed Congress on October 5th, and the Board of Admiralty was ordered to "prepare and report instructions for the commanders of armed vessels commissioned by the United States, conformable to the principles contained in the declaration of the Empress of all the Russias on the rights of neutral vessels."³⁸

³² Dip. Corr. Am. Rev. (ed. Wharton), III, p. 740; Franklin, Works (ed. Bigelow), VII, p. 62.

³³ Dip. Corr. Am. Rev. (ed. Wharton), VI, p. 801; Fauchille, *La Diplomatie Française et la Ligue des Neutres*, pp. 394-400.

³⁴ Doniol, *Histoire de la participation de la France à l'établissement des États Unis d'Amerique*, IV, p. 438.

³⁵ Dip. Corr. Am. Rev. (ed. Wharton), III, pp. 612, 632.

³⁶ Franklin, Works (ed. Bigelow), VII, p. 107.

³⁷ Jour. Cont. Cong., XVIII, pp. 864-867.

³⁸ *Ibid.*, XVIII, p. 905.

In compliance with the act of Congress, the Board of Admiralty presented additional regulations, which were adopted on November 27th. By these the freedom of neutrals to navigate on the high seas or upon the coasts of the United States was assured; commanders of all public and private armed ships were forbidden to "seize or capture any effects belonging to the subjects of belligerent Powers on board neutral vessels, excepting contraband goods;" and the term contraband was to be restricted to such instruments of war as were enumerated in the treaty of amity and commerce of February 6, 1778, between the United States and France. These instructions were to serve as a rule of proceedings in the courts on the legality of prizes, and all deviations therefrom were to be punished by the loss of the offender's commission and the payment of damages to the party aggrieved.³⁹ To complete the legislation on this subject, Congress on April 7, 1781, issued a proclamation reaffirming these rules.⁴⁰

Scarcely had Congress established these new rules of maritime law when occasion was presented for their enforcement. On August 31, 1780, the privateer *Mars* captured the Portuguese brig *Nossa Senhora de Leiramonte*, bound from St. Jube to Cork with a cargo of salt. From papers on board the brig the ownership of the cargo was found to be British. The prize was first brought to Nantes, where the American agent declared it should go free.⁴¹ But since he had no authority to order its release, he was obliged to allow the captain of the *Mars* to send the brig to Boston. This was done because "the cargo would not have been valuable in Europe, but would be in great demand in America."⁴²

The Portuguese ambassador at Paris complained to Franklin, who advised the prosecution of the case in the American courts. Writing to Congress on December 3d, Franklin said:

I hope the Congress may think fit to take some notice of this affair, and not only to forward a speedy decision, but give orders to our cruisers not to meddle with neutral ships for the future, it being a practice apt to produce ill blood, and contrary to the spirit of the new league which is approved by all Europe.⁴³

On May 26, 1781, a formal protest was laid before Congress in behalf of the Portuguese owner. This was referred to the Board of Admiralty which reported:

That the proper mode for the memorialist to obtain redress . . . is by prosecution in due course of law; and that a letter should be written by the President to the supreme executive of the State of Massachusetts . . . recommending to the said executive to give all such countenance,

³⁹ Jour. Cont. Cong., XVIII, pp. 1097, 1098.

⁴⁰ *Ibid.*, XIX, p. 261.

⁴¹ Franklin MSS., Oct. 17, 1780. Library Univ. of Pennsylvania.

⁴² Allen, Naval Hist. Am. Rev., pp. 540-542.

⁴³ Dip. Corr. Am. Rev. (ed. Wharton), IV, p. 180.

protection, and assistance to the memorialist in his attempts to obtain legal satisfaction. . . .⁴⁴

The new principle adopted by Congress with respect to neutral commerce was enforced by the Court of Appeals in the case of *Miller v. Resolution and Cargo*, decided in August, 1781.⁴⁵ The case involved an appeal from the admiralty court in Pennsylvania, where the ship had been acquitted but the cargo condemned. The facts are somewhat complicated, but indicate that the *Resolution* was a Dutch vessel carrying a cargo owned by British subjects of the island of Dominica. It had been captured by a British cruiser, war having been declared between Great Britain and Holland, and from the British it fell into the hands of the libellants.

The court, ignoring the state of war between the Dutch and the British, declared the original capture to have been illegal. Although the vessel had been in the hands of the enemy for more than twenty-four hours, the capture and occupation had not changed it into British property and thereby made it lawful prize. With respect to the cargo, the court said:

Let it be admitted that this is British property. The resolution of Congress of October, 1780, adopting the principles of the Armed Neutrality, produced the ordinance of 7th April, 1781, prior to the capture in this case. By the 4th instruction, the effects of a belligerent on neutral vessels, except contraband, are to be free from capture. This case comes expressly within the fourth instruction; the ship is certainly within the predicament of neutral property, and the cargo is the property of subjects of a belligerent Power.

The decree of the lower court was, therefore, confirmed with regard to the ship; and with regard to the cargo it was reversed.⁴⁶

The resolution of Congress of October 5, 1780, contemplated not merely the adoption of the principles set forth in the declaration of Catherine II, but aimed also to establish the United States as a party to the league which was to enforce these principles. By the close of 1780 the neutrals of northern Europe were fairly well organized for the protection of their commerce. These Powers had mutually agreed to defend their cause in common and jointly, so that an attack directed against any one of them, through some violation of the right of neutrals, would bring simultaneously

⁴⁴ Jour. Cont. Cong., XX, p. 542; see also case of *Babcock v. Brigantine Brunette*, in MSS. of Court of Appeals, Aug. 4, 1781.

⁴⁵ 2 Dallas 1.

⁴⁶ Upon a rehearing in December, 1781, the court took into consideration the fact that a state of war existed, at the time of capture, between Great Britain and Holland. But upon the new evidence, the court adhered to its first decision, except with regard to a part of the cargo, which was condemned on account of irregularities in the bills of lading and letters of advice respecting those particular articles. 2 Dallas 19; Hopkinson, III, p. 70.

the others to its defense.⁴⁷ With this league of neutrals the United States, being a belligerent, could clearly have no place. But Congress was under the belief that a meeting of all the Powers of Europe was about to be held to give sanction to the Russian declaration as a part of international law. Instructions were therefore given the American ministers in Europe to subscribe to the Armed Neutrality in behalf of their government, if they should be invited to do so.⁴⁸ John Adams, on March 8, 1781, transmitted to the representatives of the neutral Powers at The Hague the resolution of Congress. But to Prince Gallitzin, the Russian Minister, he specifically requested the admission of the United States as a party to the league.⁴⁹

In order to gain the good will of Catherine II, Congress determined on December 15, 1780, to appoint a minister to the Court of Russia.⁵⁰ The choice fell upon Francis Dana, who was then in Paris as the secretary to John Adams. The two great objects of his negotiation, Mr. Dana was informed, were to engage Catherine II "to favor and support the sovereignty and independence of the United States," and to secure "the admission of the United States as a party to the convention for maintaining the freedom of the seas."⁵¹

The achievement of these objects must have seemed almost impossible from the outset. To Catherine II, the Americans were rebels. Panin, her Minister of Foreign Affairs, had assured the British in 1778, "that so long as the British treated the Americans as rebels, the Court of Petersburg would look upon them as a people not yet entitled to recognition."⁵² Prince Gallitzin expressed his pleasure when informed of the instructions given by Franklin in conformity with the Russian declaration, but at no time did the Empress change in her attitude toward the United States.⁵³ Although France and Holland recognized American independence, the Russian Vice Chancellor, Count Ostermann, wrote Prince Gallitzin on May 6, 1782,

That Her Imperial Majesty wishes that there shall be no demonstration . . . that she approves this course. You will not receive or make any visits whatsoever to Mr. Adams, or any other person accredited on the part of the colonies which have separated from Great Britain.⁵⁴

Francis Dana found his mission to St. Petersburg to be in vain. The United States could not, while a belligerent, become a party to the Armed

⁴⁷ Kleen, *Lois et Usages de la Neutralité*, I, p. 21 ff.

⁴⁸ *Jour. Cont. Cong.*, XVIII, p. 905; *Dip. Corr. Am. Rev.* (ed. Wharton), IV, p. 80.

⁴⁹ *Dip. Corr. Am. Rev.* (ed. Wharton), V, pp. 274-276.

⁵⁰ *Jour. Cont. Cong.*, XVIII, pp. 1155, 1164, 1166.

⁵¹ *Ibid.*, XVIII, pp. 1168-1173.

⁵² Baneroff, *Hist. of the U. S.*, X, p. 257.

⁵³ Franklin MSS., June 25, 1780. Library Am. Philos. Society.

⁵⁴ MS. Memoir on the relations between the Imperial Court of Russia and the United States of America in the reign of Catherine II. Library of Congress.

Neutrality, and Catherine II refused to receive him so long as the independence of the colonies had not the recognition of Great Britain.⁵⁵

The United States, although shut out from the league of the Armed Neutrality, continued to remain faithful to its principles. The American commissioners abroad, as soon as the preliminaries of the treaty of peace had been agreed upon, urged the adoption of the rules of the Russian declaration in the definitive treaty of peace.⁵⁶ Franklin was hopeful that the complete immunity of private property from capture might be agreed upon.⁵⁷ The Dutch Government early in 1783 proposed to John Adams that the United States accede to the Armed Neutrality as already concluded, or to enter into a similar negotiation with France, Spain and Holland.⁵⁸ This suggestion met with the approval of the American ministers at Paris, but since Francis Dana was the only person having full power to sign such treaty, they were obliged to refer the matter to him.⁵⁹

In the meantime, the accession of the United States to the league of the Armed Neutrality became the subject of debate in Congress. Mr. Dana had written that the United States could not become a party to the confederation while a belligerent. But the convention was designed only for the duration of the war. Although it might be continued between the parties for a longer period, Mr. Dana found that he would be obliged to make "presents" amounting to five thousand pounds sterling to various ministers of the Russian court for the liberty of acceding to the agreement.⁶⁰

On May 21, 1783, Hamilton rose in Congress and declared that the treaties of peace completely altered the situation, and the primary object of the mission to Russia was entirely removed. He thought it was unnecessary even to conclude a commercial treaty with the Court of St. Petersburg, and moved that Mr. Dana be permitted to return home. He was supported by Madison, who pointed out that, although Congress approved the principles of the Armed Neutrality, it would be "unwise to become a party to a confederacy which might thereafter complicate the interests of the United States with the politics of Europe."⁶¹ The same view was taken by the Secretary for Foreign Affairs, Mr. Livingston, in his report to Congress on June 3d. Mr. Livingston hoped that the principles of the Armed Neutrality might be embodied in the definitive treaty of peace,

⁵⁵ For a study of the Dana mission, see Hildt, *Early Diplomatic Negotiations of the United States with Russia*. J. H. U. Studies, XXV, pp. 257-278. The correspondence will be found under appropriate dates in *Dip. Corr. Am. Rev.* (ed. Wharton).

⁵⁶ Adams, Works, VIII, p. 15; *Dip. Corr. Am. Rev.* (ed. Wharton), VI, p. 191.

⁵⁷ Works (ed. Bigelow), VIII, p. 245.

⁵⁸ Adams, Works, VIII, pp. 29, 42.

⁵⁹ *Ibid.*, VIII, pp. 30, 40, 43.

⁶⁰ *Ibid.*, VIII, p. 51; *Dip. Corr. Am. Rev.* (ed. Wharton), VI, p. 403.

⁶¹ *Dip. Corr. Am. Rev.* (ed. Wharton), VI, p. 437; *Jour. Cont. Cong.*, May 21-22, 1783. I am indebted to Miss Emily B. Mitchell of the Division of MSS., Library of Congress, for permission to use the galley proofs of the volumes of the *Jour. Cont. Cong.* for 1783.

since the concurrence of Great Britain ought to be secured. But, he thought, no convention of this kind ought to be signed unless France and Spain were also parties thereto.⁶²

Congress finally resolved, on June 12, 1783, upon a clear distinction between the principles of the Armed Neutrality and a confederation for their enforcement. The resolution set forth:

The true interest of the States requires that they should be as little as possible entangled in the politics and controversies of European nations. But inasmuch as the liberal principles on which the said confederacy was established are conceived to be, in general, favorable to the interests of nations, and particularly to those of the United States, and ought, in that view, to be promoted by the latter as far as will consist with their fundamental policy,

Resolved, That the ministers plenipotentiary of these United States for negotiating a peace be, and they are hereby, instructed, in case they should comprise in the definitive treaty any stipulations amounting to a recognition of the rights of neutral nations, to avoid accompanying them by any engagements which shall oblige the contracting parties to support those stipulations by arms.⁶³

In the instructions to the peace commissioners, this resolution was embodied, where it stood as the settled policy of the United States.⁶⁴

That the United States should have escaped from participation in a confederacy of this sort was fortunate. All the members of the Armed Neutrality of 1780 abandoned, upon the very next opportunity of their becoming belligerents, the creed which they had sought to enforce by arms when neutrals.⁶⁵ The rules to which they had subscribed represented an interest rather than a principle of right for which they were willing permanently to contend. Whatever advantage might have been gained for American commerce by membership in the league would not have compensated for the political embarrassments of such an alliance.

The principles of the Armed Neutrality survived, but they were recognized in conventional agreements and not as rules of international law. Under this guise, the rule that "free ships shall make free goods" found a warm exponent in the United States. In every treaty negotiation closely following the peace of 1783, the representatives of this government urged the rule, and in all but one secured its adoption.

⁶² Dip. Corr. Am. Rev. (ed. Wharton), VI, pp. 473-474.

⁶³ *Ibid.*, VI, p. 482.

⁶⁴ *Ibid.*, VI, p. 717.

⁶⁵ Phillimore (3rd ed.), III, p. 339.

THE PRINCIPLE OF EQUILIBRIUM AND THE PRESENT PERIOD *

By TOR HUGO WISTRAND

I.

Politics require principles. When it is a question on the one hand of acquiring a position, and on the other hand of defending it, the opposed interests seek bases upon which they can rest. The sovereignties feel the necessity of invoking the authority of a principle which seems to draw its force from considerations superior to those that can inspire the political pretensions of a particular state. An appeal is made to a common interest the supposed existence of which is taken for granted—namely, that of maintaining the peace and good relations among the states—and it is presented in a definite formula, the principle of equilibrium.

But this formula has no fixed significance in a juridical sense, its invocation being due to the fact that it claims to be the means of realizing that common interest and of expressing in a sense a natural law. In appealing to this principle, the state has *ipso facto* recognized that the ambitions of expansion can be justified only to the extent that they blend with a common interest, or at least are not opposed thereto. In order to utilize it, we must depart from the conception of the isolated state, abandon the national basis and place ourselves on the international plane.

The principle of equilibrium necessarily imposes upon the ambitious sovereignties a motive of fear and might consequently result in a certain respect for the other states. But it is precisely in this regard for the others that the foundation of international law lies. By constituting a motive of fear for the states whose ambitious designs are likely to disturb the peace, the principle of equilibrium could form a veritable sanction of international law. But, as in internal law, it does not suffice to make the rules govern, to stipulate penalties for the offenses, without maintaining public order by moral convictions of the individual; it is likewise necessary in the field of international law to emphasize considerations of a moral order. Keeping in mind this twofold aspect, we shall examine first the historical development of the principle of equilibrium and thereupon arrive at an analysis of its character.

* The present article reproduces in substance a paper read before the diplomatic section of the *Ecole des Sciences Politiques* of Paris. It was written at the suggestion of M. Dupuis, to whom the writer owes the most valuable suggestions.—AUTHOR.

Translated from the French by Dr. Edwin H. Zeydel, of Washington, D. C.

The form in which the principle of equilibrium has played a part during long periods before 1914 was determined under the influence of those ideas which signalize the end of the Middle Ages, the Renaissance and the Reformation. The Renaissance increased the authority of the sovereigns. The Roman ideas concerning their power helped to encourage them to act unscrupulously. The ancient conception of sovereignty justified the most sinister ambitions. The dissolution of the empire of Charlemagne had done away with the notion of political unity, offering the most favorable opportunity to the aspirations of the princes. The Reformation completely shattered the already greatly shaken spiritual unity; in conferring the religious authority upon the princes, it created a pretext for political enterprises. The disappearance of the power of the Pope was necessarily bound to signify an increase of the authority of the princes, who were freed from every regard of a religious order. The theories of the Renaissance with respect to sovereignty, on the one hand, and the absence of every moral principle, on the other, had to lead inevitably to a state of anarchy. It is natural that under such conditions the weakest sovereignties could not subsist without uniting, and that they had to seek to create in their united forces a motive of fear for anyone who wished to attack the integrity of one of them. These efforts were likewise necessary for the very life of the state, for in the absence of every obstacle which morality might offer, every sovereignty knows that the disappearance of its neighbor to the advantage of a stronger state will menace it. Thus during this period of anarchy the principle of equilibrium appeared to be the means most apt to safeguard the existence of the state, and the appeal made to it seemed to be due to an instinctive sentiment rather than to formulated reasons.

The immense empire of Charles V was bound necessarily to arouse fears in the other Powers. The struggle between the ruling house of France and that of Hapsburg is the most remarkable historical manifestation of this fact. In a certain sense, above these Powers there was a third Power engaged in watching over the balance of power, namely, England. There remains no doubt that the diplomacy of Henry VIII was consciously inspired by this principle. The interest of England was best realized in a balance of power between France and Austria. As a matter of fact, English politics have never abandoned the thought of Henry VIII but have applied it in the foreign relations of England with the force of a tradition. In the struggle against the menacing power of Austria, Henry IV pursued the political designs of Francis I, and Richelieu supported them under changed conditions.

The Peace of Westphalia is decisive for the part which the principle of equilibrium has played in European politics. This has a twofold aspect. Since none of the adversaries could get the upper hand, the house of Austria, which had been a menace to the other Powers of Europe, did not represent an imminent danger for the future. Thus there was realized

through the treaty a condition corresponding to the idea of equilibrium. But, moreover, it is clear that this condition could not subsist without the support of the same principle. In causing the absolute collapse of every conception of unity, the Peace of Westphalia created a Europe composed of independent sovereignties, and although their ambitions were not nurtured by Machiavellian theories, moral ideas were not capable of guiding them. It follows from this that the only guarantee against the abuse of force by a state whose political designs threatened others was to be found in a combination of Powers. In this sense the Peace of Westphalia furnished the basis of a policy inspired by the principle of equilibrium.

However, it soon appeared that the conception, as it was realized in the Peace of Westphalia, could not guarantee a pacific development. As yet equilibrium is only a formula without any moral basis. The brutal operations attendant upon the organization of the German sovereignties disclose its true character. The ambitions of Louis XIV brought about the formation of the coalitions aiming at the maintenance of the equilibrium which was threatened by him, but when subsequently the menace appeared in another quarter, namely in the prospect of the reëstablishment of the empire of Charles V, we witness England withdrawing from the coalition in the name of the same principle. In a word, it was due to the policy of England that neither Austria nor France could acquire a predominance which would have resulted from a union with Spain, and that the Treaty of Utrecht could thus reëstablish the equilibrium.

In this new state of affairs it was no longer a question of maintaining a balance between two continental Powers—Austria and France. It was necessary to take the claims of Russia into account, and the problem which the principle of equilibrium is called upon to solve is considerably complicated. None of the Powers was in a position of being able to dominate the others, but none was ready to abandon its ambitious designs. In order to satisfy these wishes and at the same time the desire for a balance of power between the Powers, the logical conclusion must be found in the partition of the weak states. It is thus from this point of view that the principle of equilibrium is interpreted in the partitions of Poland, an interpretation completed and perfected by the idea of a partition in consonance with the existing state of strength of the Powers. However, the idea of partition caused the maintenance of the equilibrium to be forgotten, so that Napoleon, taking advantage of the territorial cupidity of the coalitionists, could succeed in destroying it. It required the crushing of Prussia and Austria and the threat against Russia to make it clear that the European equilibrium was shaken. Thus the earlier conception of the principle was revived.

The discussions of the Congress of Vienna show in a very plain manner the complicated questions which the analysis of the principle raises. The allies sought to reëstablish the equilibrium but at the same time to reduce France to its former limits. But how were these two matters to be recon-

ciled, granted that the material increase of the allied forces would have to allow France a relative increase? Thus the discussion introduces into the conception of equilibrium elements likely to complicate it. It was imperative to take into account the qualities of the state which do not necessarily correspond to powers of aggression. This thesis, upheld by France, was not admitted in its consequences. The principle continues to serve the egotistical ambitions of every state which makes its claims under this vague formula. Only France, being in a certain sense disinterested, tried to introduce the moral element. It is easy to understand the importance of this new conception, introduced by Talleyrand. If the principle of equilibrium could not guarantee peace, if it served in an odious manner to the detriment of the weak states, the reason was because the moral idea had not been introduced into it. In order to construct a just equilibrium, no purely arithmetical methods must be applied, as the principle is not a mechanism which can make an abstract question of the various qualities of each population and its moral force. These ideas, which brought considerable complication into the work of the Congress of Vienna, convinced M. de Metternich, at least with regard to the necessity of taking account of the nature of the populations in the territories in dispute. The expression of this conviction will be seen in the appointment of a statistical commission for estimating the territories from the point of view of their population.

Certainly it can not be denied that these efforts helped to render the Treaty of Vienna more durable. But the moral considerations invoked by Talleyrand could not readily penetrate the minds of the diplomats. The latter, occupied in the first place by material questions relating to the strength of their respective states, were not attached to the wishes of the populations. It became a new task for European politics to determine and regulate the influence which this element could have upon equilibrium. Thus it was with regard to the question of Greece and with regard to the problem of Belgium. In the former it appeared that the equilibrium could be adapted to the national claims and in the latter it could be reëstablished by virtue of the neutralization of the Belgian State.

The policy of Napoleon III was characterized by the same efforts, perhaps to the detriment of France. During the Crimean War the principle of equilibrium was invoked against Russian aggression. The balance was restored without conquest or partition and in harmony with certain national claims. In his Italian policy, Napoleon III attempted to carry out the French point of view of equilibrium against the Italian power, created with his aid by national forces. The reunion of Savoy and of the county of Nice with France shows the principles which directed his policy. Since their application against Prussia could not have so happy an issue, Napoleon sought to conceal the failure of his policy under a new form of equilibrium. "The Emperor does not believe that the greatness of a country depends upon the weakening of the peoples which surround it and he sees a true

equilibrium only in the fulfilled wishes of the nations of Europe.¹ However, it was evident that the balance was inclining to the side of Prussia, a fact which in 1870 presented itself in a manner threatening for France. The Hohenzollern candidature placed France in a position which her policy had constantly sought to avoid in the name of equilibrium. The principle invoked in the declaration of war furnishes the best example of the flexibility of the conception: Europe did not consider the equilibrium to be in danger.

After the defeat of 1870, France tried to reëstablish the balance of power by allying herself with Russia. It was made clear in 1914 that this combination could not suffice to insure peace. It required the entrance into the war of the Powers outside of Europe in order to create a balance against Germany. Thus the war has given to the principle a world aspect, the first stage of which was the Anglo-Japanese Alliance in 1902. Without doubt, extra-European questions have for a long time had a great influence upon the problem of equilibrium in Europe. But they have simply been the elements of the problem. Now the question arises as to whether the principle will be able to satisfy the requirements of a world policy, in view of the necessity of taking into account the extra-European Powers as independent elements. These considerations blend with another point of view, namely, that it is necessary to seek a means which will secure the general peace in a more happy manner.

II.

The tremendous complexity which the conception of equilibrium presents follows from its historical development. We must determine its character by studying the principal characteristics which have resulted from the examination made of it. Is the principle itself a rule of law? Has it any importance at all for international law?

We have shown how the principle of equilibrium has been invoked in very different situations. The constructions made in its name present an infinite variety. It has permitted conquests or partitions, depending upon the circumstances. At times it has shown itself favorable to national claims. It can not furnish identical solutions in identical cases. This lack of stability must deprive it of any pretensions that it may have of being a juridical rule.

However, from another point of view it possesses a certain importance. Its vague contents make negotiations possible. No one can refuse to avail himself of it as a basis, for over against the claims of his adversary in the name of equilibrium, he will always be able to set up a contrary opinion founded upon the same basis. And the one who will be forced to make a concession will be able to style his defeat as an action done in conformity with the same principle.

¹ *Livre jaune*. Documents diplomatiques, 1867, VIII, p. 101.

Although it is not a rule of law, one can not deny that it has considerable importance for international law. The principle of equilibrium could form the sanction of international law. It could constitute the force by virtue of which the right of each party might be realized. Just as in internal law the liberties of individuals are protected by the fear of punishment entertained by him who might wish to violate them, the same motive could restrain one state from attacking another. A firm belief that the equilibrium will be endangered would suffice to marshal against the aggressor the united forces of the others, and the conviction that such an event would produce, would hold in check the evil passions and would prevent war.

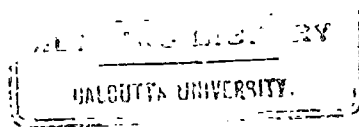
Why has the principle of equilibrium not succeeded in fulfilling these functions? We have suggested that it lacks clearness, that it can be given various interpretations and that it can serve opposed interests. But, on the other hand, it can not be denied that there are cases in which the states have almost instinctively united against another state which seemed to them to threaten the balance of power. It is sufficient, in this connection, to note the coalitions against Louis XIV, Napoleon I, and recently against Germany. It must also be stated that although the interpretation of the principle may very often present difficulties and serve egotistical interests, the facts may be so evident that the judgment will not be contestable.

But who will be competent to judge whether the balance of power is threatened or not? Over and above the difficulty which the interpretation of the principle itself offers, there is here a question of the highest importance to be solved. Without an organ to apply the force which the opinion of the Powers represents, each one of them will be able to invoke arbitrarily the authority of the principle, which under such conditions can not be conducive to the general interest. But given the existence of a competent organ and the conviction on the part of the organ that the balance of power is being threatened by some state, will it be possible to make this state responsible? Will it be possible to check the growth due to the fortunate development of the economic and moral forces of a country? The industrial life of a state will, for instance, require colonies. What means shall be employed to satisfy the necessary needs of a country? It is evident that the change of physical and moral conditions will never permit a balance *status quo*. This is still another reason why the principle of equilibrium could not succeed in guaranteeing international law.

We have shown that every invocation of the principle of equilibrium necessarily presupposes the existence of a general interest. This interest has not been everywhere understood or perhaps it has not always existed—this interest of peace. It was natural that the ambitions of the states sought their satisfaction in war at a time when the victor derived material benefits from his victory. Now, when the economic effects of war are heavily felt by all the states, their common interest is clearly outlined.

And the community of interest from this point of view will be accentuated to such an extent that all means will be employed to hinder a state from aggrandizement in a manner which constitutes a menace to the others. The same holds true in a case where the aggrandizement is due to a development of the interior forces of the state. In adopting this point of view, it does not follow necessarily that the solidarity of the states would demand the mutilation of another state whose growing greatness depends upon its moral or material activity. Diplomacy can furnish other means designed to give free play to the interior forces of the state; by treaties of commerce the need of raw materials can be satisfied, and by virtue of the system of spheres of interest, the population can find new fields for its activity. But in order to realize this idea of solidarity which should unite the states against evil passions conducive to war, the moral element must manifestly be emphasized. It will be necessary for the state to have the desire to reconcile its own interests with the respect for the rights of the others. The thought of Talleyrand has not lost its applicability.

It must be stated that if the principle of equilibrium has not succeeded in guaranteeing the rights of all, the reason for this is the fact that there is no instrumentality capable of giving a just interpretation to the requirements of the principle, that the common interest of the states in maintaining it is not clearly defined, and that the considerations of a moral order have not been introduced into it. It is clear that in the efforts to constitute the League of Nations we must see the expression of a desire to create a new condition of affairs in this connection. The conception of moral obligations among states, their common interest accentuated by a formal organization, and the institution of an executive agency indicate a development in this direction. But what should be specially noted is the fact that these efforts are made, not because they are considered as sufficient or useful in themselves, but in order to bear out the principle of equilibrium. For the system which incorporates the collective threat or the use of military or economic force against a state that seeks to disturb the peace can only rest upon the principle of equilibrium, better understood and better realized.



COLONIAL REPRESENTATION IN THE AMERICAN EMPIRE*

(WITH SPECIAL REFERENCE TO PORTO RICO)

BY PEDRO CAPÓ RODRÍGUEZ

Member of the Porto Rico Bar and the Bar of the Supreme Court of the United States.

Ordinarily we speak of an empire as a state governed by an emperor, as for instance, the two Napoleonic Empires in France. But in a broader and more modern sense, an empire is a powerful state which has wide and supreme dominion over extensive and outlying territories and countries inhabited by peoples usually of a different race, historical background and civilization. In this manner, we speak of an imperialistic nation when the policy of that nation, whatever its form of government, aims to create for itself a position of dominance and control over backward, weaker or helpless nations, territories or peoples.

The expression American Empire may be perhaps a trifle shocking. It was, however, used long ago by Chief Justice Marshall, and repeated by other eminent jurists, statesmen and writers both of this country and abroad. While no one will claim, I think, that the United States has ever deliberately or consciously pursued an imperialistic policy, yet there is indeed sufficient evidence in the history of this country to convince any one that we have very noticeable imperialistic tendencies among certain classes of our citizens. As a matter of fact, there is now at the present time, and there has always been in this country in the past, a powerful group of men who have at different times fostered and encouraged the notion of establishing an American Empire. Franklin, we are told by a careful American writer, had already planned in 1775 an American Empire. He says:

When it is recalled that it was Franklin who made the first draft of Articles of Confederation which was considered by Congress, it is not surprising to find that it contained provisions establishing an American Empire in which the American Confederation was to be the Imperial State. It was Franklin who made the original draft of the Plan of Union which, as has been already noticed, provided for the establishment of an American Empire much more completely and distinctly than it did for the

*This article is based, mainly, on a lecture delivered by the writer before the School of Diplomacy, Jurisprudence and Citizenship of the American University, Washington, D. C., May 23, 1921.

establishment of an American State. He was the foremost expansionist of his times. . . .¹

That the doctrine of national expansion, which is perhaps a less aggressive and a more pleasing term than imperialism, has had very numerous and powerful partisans among the people of this country is shown by the fact that since the creation of the Union of the thirteen original colonies, the United States has developed steadily in amazing proportions to its original size, adding more and more territory, until today the American people can truly boast, as did Charles I of Spain, the richest monarch in the Christian world, nearly four centuries ago: "The sun in my dominions never sets."

Originally the United States was merely a confederation of States. The Union of these States began among the colonies and grew out of a common origin of mutual sympathies, kindred principles, similar interests and geographical relations. This union was confirmed and strengthened by the necessities of war and received definite form and character and sanction from the Articles of Confederation.² As originally established, the United States had no territory whatsoever. As is well known, the territory belonged to or was claimed by the individual States. Soon, however, after the confirmation by the treaty of 1783 with Great Britain of the claims of the original thirteen states to the territory stretching to the west as far as the Mississippi River,³ the so-called "Territory Northwest of the River Ohio" came under the control of the Continental Congress through the cessions made by New York in 1781, Virginia in 1784, Massachusetts in 1785 and Connecticut in 1786.⁴ Thus, when the present Constitution was adopted for the purpose of establishing "a more perfect Union," we find the United States already the possessor of that wonderful tract of territory so famous in the history of this country, consisting of the area west of Pennsylvania, north of the Ohio River and east of the Mississippi, which now constitutes the richest center of population and wealth in the United States. The "Territory Southwest of the River Ohio" was then acquired by the United States by virtue of the cessions made by South Carolina in 1787, North Carolina in 1790, and Georgia in 1802.⁵

¹ A. H. Snow, *The Administration of Dependencies*, Chap. XIX, entitled "The American Empire Planned, 1776."

² *Texas v. White*, 7 Wall. 700.

³ "The conclusion of the peace treaty with Great Britain in 1783 gave to the Americans an area bounded on the west by the Mississippi, on the south by Florida, and on the north by the Great Lakes and the ridge between the St. Lawrence and the Atlantic. Their neighbors were the Spanish on the south and the west and the English on the north." O. P. Austin, *Steps in the Expansion of Our Territory*, pp. 79-80.

⁴ Gannett, *Boundaries of the United States*, House Doc. No. 679, 58th Cong., 2nd Sess., pp. 30-35.

⁵ *Ibid.*

After that the territorial expansion of this country was enormous. In rapid succession the United States acquired the Province of Louisiana in 1803, the Floridas in 1819, Texas in 1845, Oregon in 1846, California and the other western territory acquired from Mexico in 1848 and 1853. In addition to these acquisitions of contiguous territory, the United States has acquired complete sovereignty over Alaska, Hawaii, the Philippine Islands, Porto Rico, the Virgin Islands and some other minor islands in the Pacific and elsewhere.⁶ The United States has also acquired the Panama Canal Zone, and exercises virtual protectorates over Cuba, Panama, San Domingo, Haiti and Nicaragua. We see, therefore, that while the United States was at first merely a Confederation of States, with no territory outside that belonging to the individual States, it is now a very powerful nation, developing rapidly into a magnificent empire; an empire which embraces within its jurisdiction, first, the States which compose the Union as the metropolitan nucleus, and second, the overseas possessions and dependencies and non-contiguous territories and protectorates as the subservient parts of that empire.⁷

When the present Constitution was adopted, its framers were intent on the creation of a union of States. Provision, therefore, was made in that instrument for representation in Congress by the States only.⁸ The territory which was already in the possession of the United States was mentioned only in the clause giving Congress the power to make rules and regulations for the management and disposition of the territory and other property belonging to the United States.⁹ In regard to colonial representation the Constitution is silent.

Previous to the war with Spain in 1898, it cannot be said that the United States had ever embarked upon the business of a colonizing empire. The memory of colonial days was still too fresh in the minds of the people to permit of any such delusions as an American Empire; and yet we find already before and during the War of Independence the notion that the United States ought to include at least all the English and French-speaking communities of North America, and for years afterwards the view was often expressed that no durable peace with England could exist so long as she retained possessions in the North American Continent. "And when by degrees," says Lord Bryce in his masterly work entitled *The American Commonwealth*, "that belief died away, the eyes of ambitious statesmen turned to the south." The slave-holding party tried to acquire Cuba and Porto Rico in the expectation of turning them into slave-holding States; and after the abolition of slavery, attempts were made by Seward in 1867 to acquire St. Thomas and St. John from Denmark. President Grant also

⁶ Gannett, *op. cit.*

⁷ "The Union is the Imperial State as respects the dependencies." Snow, *op. cit.*

⁸ U. S. Const., Art. I, secs. 1, 2 and 3.

⁹ *Ibid.*, Art. IV, sec. 3, par. 2.

tried in 1869-73 to acquire San Domingo, which was an independent republic, but the Senate frustrated both these designs. Apart from these incidents, and the purchase of Alaska, the United States showed no desire to extend its territories from the Mexican War until the war with Spain in 1898.¹⁰ The annexation of the Hawaiian Islands took place in the same year.¹¹

It is of the first importance to be observed here that the wonderful growth of the United States until that time had been upon the basis of territorial acquisition with a view to ultimate statehood. This had been so since the acceptance by the Continental Congress of the cession made by Virginia in 1784 of all her right, title and claim to the Northwestern Territory, "upon condition that the territory so ceded shall be laid out and formed into states . . . and that the states so formed shall be distinct republican states, and admitted members of the Federal Union, having the same rights . . . as the other States." And in order that the United States might carry out and fulfill these undertakings, power was given to Congress in the present Constitution to admit new States to the Union.¹² In the meantime the newly acquired territories were held under direct control of and right of disposition by Congress until they had become sufficiently populated and prepared to be admitted into the Union upon an equal footing with the other States. This practice had been strictly followed ever since the first acquisition of territory by the United States until the cessions made to this country by Spain as a result of the Spanish-American War in 1898. That war, as aptly remarked by Judge Elliott in his remarkable work on the Philippines, may be graphically described as the "coming out party" of the United States as a colonizing nation. It really marked a new epoch in the development of the American Empire, and indeed a new stage in the development of colonial government.

As is well known, the new acquisitions presented a new series of problems which called for very extraordinary solutions. Under the famous Northwest Ordinance of 1787, enacted in accordance with the conditions of the cession made by Virginia three years before, the principle was proclaimed by which American expansion was to be regulated.¹³ By that ordinance the wide expanse of territory ceded by Virginia to the Continental Congress was declared a national domain, a reserve tract out of which, as

¹⁰ W. F. Willoughby, *Territories and dependencies of the United States*: Austin, *op. cit.*

¹¹ *Ibid.*

¹² Art. IV, sec. 3; see Watson on the Constitution, Vol. 2, p. 1245 *et seq.*

¹³ The authorship of this ordinance rightly belongs to Mr. Jefferson, and next to the Declaration of Independence (if indeed standing second to that), this document ranks first in historical importance of all those drawn by him. According to Mr. Willoughby, "Next to the Constitution itself, it is the most important organic act of the Federal Government." Willoughby, *op. cit.*, p. 27 *et seq.*; see also Watson, *op. cit.*, p. 1245 *et seq.*

the population increased, new States should be created, as already suggested, with rights in every way equal to those of the old ones. And even before such States should come into existence, the settlers in this region were to be granted the right of *habeas corpus*, of trial by jury and other essentials of Anglo-Saxon liberties. There was to be a local legislature or General Assembly composed of the governor, a legislative council and a house of representatives with authority to make laws in all cases for the good government of the district not repugnant to the provisions of the Ordinance. And as soon as a legislature should be formed in the territory, the council and house of representatives assembled had authority to elect, by joint ballot, a delegate to Congress, with a seat in Congress and a right of debating, but not of voting during this temporary territorial government.

Archibald Cary Coolidge, an American writer of note, has this to say:

The principle of the Northwest Ordinance was a new one in the history of democratic national expansion. Up to this time, colonies—unless, like the Greek ones, they separated themselves at the start—had been regarded as mere appendages or outposts of the mother country. They might have privileges and liberties of their own, but these privileges were personal; the territory did not form an equal part of the parent state, except in countries with an autocratic form of government, where all lands were at the disposal of the sovereign. Thus, though the emigrant to Eastern Siberia might feel that his position was exactly the same as that of his brother in Moscow, since both were subjects of a despotic ruler, the Englishman in the colonies was not the equal of the one at home, for he could vote for no member of parliament. No one of the English settlements had enjoyed complete self-government from the beginning; and the American Colonies had not contested the right of the mother country to legislate for them. They had merely resisted, as a violation of their inalienable rights as Englishmen, her attempt to impose taxes upon them without their consent; and this resistance had led to the war for independence. Now that they had triumphed and had possessions of their own about which they must legislate, they wisely determined to treat the new colonies as the equals of the old, and to impose upon them only such temporary restrictions as were necessary during the period of first development, when they were too weak to walk without guidance. Not only is the Northwest Ordinance thus of fundamental importance in the history of the United States, but it is a landmark in the story of government.¹⁴

This principle of the Northwest Ordinance that the government by Congress of the territory belonging to the United States was to be merely temporary until its admission to the Union as a State or States thereof, upon an equal footing with the other States, was successively extended to all other territories subsequently acquired by the United States. In carrying out this principle Congress had full power and authority to fix the time and conditions for the proper admission of the new States under the

¹⁴ The United States as a World Power, pp. 28, 29.

Constitution. Of course, no condition imposed by Congress upon the territory for its admission into the Union as a State would be binding upon the new State which attempted to place it in a position of inferiority or inequality in respect to the other States. When a territory is admitted into the Union as a State thereof, it at once takes rank with every other State. There are no grades among the States of the Union. Until a State is in the Union it is out of it, but once in, it is on a perfect equality with every other State.¹⁵

In so far as representation in Congress is concerned, originally and until the Spanish-American War in 1898, the principle was virtually recognized that the territories were at least entitled to be heard in the law-making body of the United States. Thus, it became the constant policy of Congress when legislating for the organization of newly acquired territory by the United States to grant to such territory the right to have a delegate in Congress, with a seat in the House of Representatives, and a right of debating but not of voting therein.¹⁶ And while this sort of representation was not at all adequate or effective, yet so long as the old order of things continued to exist, that is to say, so long as the principle of ultimate admission to the Union was adhered to, this defective and inadequate representation of the territories in Congress was generally viewed as merely temporary and preparatory to the proper representation of the future State in the councils of the nation upon an equal footing with the other States, and therefore, was considered acceptable, and probably no one ever complained.

It is probable that adherence to the principle of the Northwest Ordinance had been until then possible not only because the territories so far acquired by the United States, with the exception of Alaska and Hawaii and some minor islands in the Pacific and elsewhere, had been contiguous territories, but also because they were populated by the same sturdy race of Americans who had peopled the original colonies which formed the Union, or if by other peoples of a different extraction and race, they were so sparsely populated that this alien element of their population could be easily outnumbered in the course of time by the steady increase of American settlers, all of which contributed to give greater solidarity and strength to the Union.

But now, suddenly and without warning, the whole situation was changed by the fortuitous circumstances of the Spanish-American War,

¹⁵ *Dick v. United States*, 208 U. S. 340.

¹⁶ "There is no authority (express?) in the Constitution for granting a representative to a territory, nor is there any authority in that instrument for allowing a territory to be represented by a delegate, but it has been the policy of the government to permit each territory to elect a delegate to the House of Representatives. Such delegate is given the privilege of taking part in the proceedings of the House, but he is not permitted to vote on any measure coming before that body." Watson, *op. cit.*, Vol. I, p. 169.

and this country found itself confronted with the difficult and complicated problems arising from the acquisition of distant and alien territories and peoples of different ethnical compositions, history and civilization, entering, so to speak, upon the adventure of an imperial career.

In the first place there were the Philippines, an enormous archipelago composed of more than three thousand islands, 7000 miles away, with their eight or ten million of heterogeneous peoples in various states of civilization, and the overwhelming difficulty of applying to them principles which until that time had been so easily applied in the former territories acquired by the United States. On the other hand, there was Porto Rico, an island in the Caribbean, about a thousand miles from the mainland of the United States, densely populated by a fairly homogeneous and cultured people who had received the American forces as fellow Americans and liberators; but a people of a different ethnical structure, with a different historical background, with different language, customs, laws, religion, mental processes, ideals, and everything that goes to make up a people.¹⁷

Out of this situation naturally arose the notion of governing these peoples upon an entirely different principle.¹⁸ There was, on the other hand, a large portion of the American people who were opposed to the retention of these acquisitions and the application to them of the same old principle lest they should disturb the social, political and economic life of this country. The sentiment of this large portion of the American people was so keen on this point, especially as to the Philippines, that the Senate of the United States took upon itself, soon after the act of ratification confirming the treaty of cession, to make by resolution the following declaration by a vote of 26 to 22:

*Resolved, etc., That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the territory of the United States, but it is the intention of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants of said islands to prepare them for local self-government, and in due time to make such disposition of said islands as will best promote the interests of the United States and the inhabitants of the said islands.*¹⁹

This resolution could not of course have any legal effect on the actual political status of the Philippine Islands,²⁰ but it was indeed an apparent departure from the old principle which had been applied theretofore in

¹⁷ "Instead of an open field offering every facility for the building-up of American communities with American institutions and laws, the United States, in Porto Rico and the Philippines, thus, had to do with countries fully occupied and already completely equipped as regards public institutions." Willoughby, *op. cit.*, p. 79.

¹⁸ See this JOURNAL, Vol. 10, pp. 312-317.

¹⁹ Cong. Rec. 55th Cong., 3rd Sess., Vol. 32, p. 1847.

²⁰ Fourteen Diamond Rings, 183 U. S. 176.

respect of all previous acquisitions. Or, as said by Mr. William J. Bryan, the leader of the Democratic Party, in a famous speech at that time:

I want to distinguish between expansion and imperialism. Republicans try to hide behind the word expansion. They say we have expanded in the past. Yes, my friends, this Government has expanded. This nation has secured contiguous territory, territory suitable for the settlement by American people, and that new territory has been settled and built up into States; but when we have expanded heretofore we have extended the limits of a republic. Now we are asked not to expand the limits of a republic, but to aspire to an imperial destiny and convert a republic into an empire.

Be not deceived. There is nothing in the past like that which we now are asked to embark upon. Heretofore we have had no expansion that separated citizens into two classes. Heretofore when people have come in they have come in to share in the destiny of this nation. This is the first time that we have been told that we must cross an ocean, conquer a people, drag them under our flag, and then tell them they are never to be citizens, but are to be subjects, and to be treated with kindness by our people.²¹

As to the future disposition to be made of Porto Rico, nothing was said at the time; but partly because of the natural alarm of the people and partly because of the apparent necessity of empowering the Federal Government to deal with the new acquisitions in the manner and form that should become the situation, the doctrine was for the first time promulgated in the constitutional history of this country that newly acquired territories and peoples were not to be considered as integral parts of the United States, as the former territory had been, but merely possessions or dependencies of the United States, subject to future disposition by Congress.²² In this way Congress was given unlimited power of government and disposition, not only over the Philippine Islands and Porto Rico, but also over any other territories and peoples that should be acquired by the United States in the future. This was indeed a very radical change, commendable perhaps for the gradual development of the American Empire, but it cannot be denied that the inhabitants of both the Philippines and Porto Rico were deprived of the benefits of the Constitution and time-honored traditions of the Republic—rights which had been always recognized and acknowledged to be inherent rights of the inhabitants of the former territories of the United States; and while efforts were made at the same time by proper limitations upon this novel doctrine, to protect these people against unreasonable encroachments by Congress upon their elemental rights of life, liberty, property, public worship, etc., such fundamental rights of American liberty as the writ of *habeas corpus* and public trial by jury were absolutely denied to them.

²¹ Cong. Rec., 56th Cong., 1st Sess., Vol. 33, p. 6340.

²² For the legal aspects of the doctrine see *Downes v. Bidwell*, 182 U. S. 244; see also an article by the writer on "The Relations between the United States and Porto Rico" in this JOURNAL, Vol. XII, pp. 483 *et seq.*

One of the most important features of these unusual conceptions in the American theory of government was that these newly acquired territories were not to be regarded in any legal or political sense as future States of the Union, and therefore they were not given any positive right of representation, not even the very limited, inadequate and ineffective representation which had been accorded to all other territories in the past. Thus, while under the old order of things the territories were entitled to have a delegate in the House of Representatives with a seat therein and the right of debating, that is to say, with the right to speak and thus present his own views upon any subject brought up for the consideration of that body, but with no right to vote which might directly and effectively influence Congressional legislation, the newly acquired territories were not considered entitled to even that meager representation. Under the impression, however, that the people of these newly acquired territories should have some sort of official recognition in Washington, the capital of the nation, near the Federal Government, they were permitted to have so-called Resident Commissioners to the United States. In order to understand what is a resident commissioner from these newly acquired territories to the United States, we must go directly to our best source of information, namely, the organic acts of these territories, enacted by Congress for their government; and since the character and rights, or privileges, of all these Resident Commissioners are substantially identical, we shall take as an illustration the case of Porto Rico. The first organic act of Porto Rico, the so-called Foraker Act, enacted in 1900, provided (Section 39) as follows:

That the qualified voters of Porto Rico shall choose a resident commissioner to the United States, who shall be entitled to official recognition as such by all Departments, upon presentation to the Department of State of a certificate of election of the governor of Porto Rico, . . . Provided, That no person shall be eligible to such election who is not a bona fide citizen of Porto Rico, . . . and who does not read and write the English language.²³

The same provisions have been practically reenacted in the present organic act of that island, the so-called Jones-Shafroth Act, passed by Congress at the urgent demand of President Wilson in 1917.²⁴

From a careful examination of these provisions, it is apparent that the Resident Commissioner from Porto Rico is not a delegate in the same sense as the delegates from Hawaii and Alaska are, for he is neither entitled to have a seat in the House of Representatives, nor the right to debate, and much less to vote. However liberally construed, these provisions do not

²³ 31 U. S. Stat. at Large, p. 77; see also Some Historical and Political Aspects of the Government of Porto Rico, by the present writer, in *The Hispanic American Historical Review*, Vol. II, pp. 566 to 567 and 581-582.

²⁴ Public. No. 368, 64th Cong. [H. R. 9533]. Also in Kettleborough's *The State Constitutions*.

entitle him to even so much as to be admitted to the floor of the House. If he is allowed a seat therein, if he ever is permitted to take the floor in the House of Representatives, it is by the mere courtesy of that branch of Congress, and must be therefore by unanimous consent of the members present at the time, for if a single representative should object to his taking the floor, there would not be any parliamentary escape to a positive negative. Sometimes he is given two minutes, sometimes three, sometimes five, but rarely is he allowed more than ten minutes to talk. Usually if the time allowed him by the House expires before he has finished his speech, he is allowed one or two minutes more, and if still he has something else to say, he is permitted to extend his remarks in the record as a further compliment, if they are not too long.

Under these conditions it is apparent that the Commissioner from Porto Rico will have, out of necessity, to circumscribe his remarks to matters directly concerning that island, for it is highly problematic whether the House would, except under very exceptional circumstances of personal charm and eloquence on the part of the Porto Rican Commissioner, extend to him the courtesy of debate in matters not relating to the island. It has not happened as yet, and it is not, in my opinion, very likely that it will ever happen, at least while things continue as they are.

It is for these reasons, perhaps, that the Commissioner of Porto Rico will, as a rule, absent himself from the House, unless, out of mere curiosity he attends the meetings as a spectator, just to see what is going on therein, or unless some legislation is pending before the House which directly or indirectly affects Porto Rico, or unless, perhaps, he wishes to call the attention of the House of Representatives to some matter or event affecting the interests of the island, or to some petty question of personal privilege.

He is not in any legal or parliamentary sense of the word a member of Congress, although, indeed, he is entitled to use the same stationery as the members of Congress and is given office quarters in the House Office Building, and has the same salary, and all the other perquisites and emoluments pertaining to representatives in Congress.

And this condition attending the so-called representation of Porto Rico in Congress is in substance equally applicable to the representation of the Philippines. So far, however, as the Philippine Islands are concerned, a very marked distinction may be perhaps established which may, no doubt, change our point of view. Owing, of course, to the fact that Porto Rico and the Philippines were acquired by the same act of cession from Spain, it is legally assumed that their status is identical as possessions or dependencies of the United States.²⁵ The apparent and logical conclusion from this would seem to be that both should occupy identical positions in this matter of colonial representation in the American Empire. As a matter

²⁵ Fourteen Diamond Rings, *supra*, note 20.

of fact, however, a very plausible reason might be presented to justify this sort of representation by so-called Resident Commissioners in the case of the Philippines, while in the case of Porto Rico it could have and has no justification at all.

It is not necessary to emphasize the wide differences existing between Porto Ricans and the Filipinos in their respective ethnic compositions, actual state of culture and development, and social, political and economic problems, geographical positions, or the international aspects of their situation, in order to show a justification for considering Porto Rico and the Porto Ricans as two entirely different things from the Philippine Islands and the Filipino people. The matter refers to the policy of the United States respecting the ultimate political status and disposition to be made of Porto Rico and the Philippine Islands.

In a message delivered by President Wilson before both Houses of Congress, in 1913, he made the following declarations:

No doubt we shall successfully enough bind Porto Rico . . . to ourselves by ties of justice and interest and affection, but the performance of our duty toward the Philippines is a more difficult and debatable matter. We can satisfy the obligations of generous justice towards the people of Porto Rico by giving them the ample and familiar rights and privileges accorded our own citizens in our own territories, . . . but in the Philippines we must go further. We must hold steadily in view their ultimate independence, and we must move towards the time of that independence as steadily as the way can be cleared and the foundation thoughtfully and permanently laid.²⁶

The principles embodied in these words of President Wilson were some years later incorporated in the new organic acts for the Philippine Islands and Porto Rico. While in the preamble of the new organic act for the Philippines approved by President Wilson on August 29, 1916, it was stated that "Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein,"²⁷ in section 5 of the organic act for Porto Rico, approved by President Wilson on November 2, 1917, it was provided: "That all citizens of Porto Rico . . . are hereby declared and shall be deemed and held to be, citizens of the United States."²⁸

And President Harding in a recent speech made in New York at the unveiling of the statue of Simon Bolivar in Central Park, said:

We do not forget that in the United States today we have Latin-American devotion to the Stars and Stripes. Porto Rico is a part of us, under a permanent policy aimed at her prosperity and progress, and we see in our

²⁶ Abridgment, Messages & Documents, 1913, Vol. I, pp. 9-10.

²⁷ Kettleborough, *op. cit.*, p. 1597.

²⁸ *Supra*, Note 24.

Latin-American state the splendid agency to help interpret the Americans to one another.²⁹

From these solemn declarations of the American people by the mouth of their most authorized representatives, it would seem safe to infer that the policy of the United States towards these territories and peoples is to be shaped quite independently of each other, and that while Porto Rico is to be retained as a permanent part of the United States, the Philippines are not to be incorporated into the Union but rather separated and made independent, either immediately, or gradually, or as soon as the moment is deemed opportune for carrying into execution such a policy by direct legislation.

Now, if the Philippines are never to be incorporated into the United States, but are eventually to be given their independence, it would seem quite logical and proper not to give them any real share in the making of our national laws.

But the case of Porto Rico stands altogether upon a different footing. Although it might be very well said that previous to the breaking out of the great European War in 1914, there were still in this country some distinguished statesmen and diplomats who thought that the wisest and most practical and probable solution of the Porto Rican problem would be to establish Porto Rico as a new republic, after the fashion of Cuba, under a virtual protectorate by the United States, conditions have changed to such an extent during and since that war all over the world, that such a solution would hardly find support today among responsible Americans. The policy of the United States respecting Porto Rico seems to be, as already suggested, to retain permanent sovereignty over that Island, the only difficulty in that direction being the question of fixing and determining the exact political relations that must exist between the two countries in the future. Manifestations of this policy may be found not only in the responsible declarations of prominent Americans, but also in the general course pursued by the Federal Government in Porto Rico and the extension of the privilege of American citizenship to the inhabitants of the island.

If I am not mistaken respecting a fixed policy by the United States of retaining permanent sovereignty over the island, the question of fixing the future relationship which must bind forever Porto Rico to the United States may well be said to hinge upon the question whether the American people will decide now or later to recede from the path of an imperial career and return to the old principle of the Northwest Ordinance. If it is decided to follow again the principle of that Ordinance, the solution will naturally be statehood, that is to say, the ultimate admission of Porto Rico as a State of the Union on a footing of equality with the other States. If,

²⁹ *Washington Post*, April 20, 1921.

on the other hand, the American people decide to abandon that precious principle which has given cohesion and stability to this great Republic, preferring to deviate from the straight path of equality, and embark upon the world-worn adventure of a great empire, founded upon inequality, then, I am afraid the situation will have to be the perpetuation of a colonial system, which in the course of time must fall and crumble into dust.

In the first alternative the question of representation is immediately determined, because in case of Porto Rico's admission as a State, the Constitution would give to that island a satisfactory representation based upon the same ratio as the representation of all the other States. In the second alternative, that is to say, in the case of retaining Porto Rico in its present condition of a mere colony, possession or dependency of the United States, the question of representation becomes a real problem for this nation to solve, for no greater folly can be entertained by imperialistic nations at this present day of popular education and enlightenment than to expect, unless it is done by sheer force of arms, and until that force can be successfully opposed by a greater one, that peoples who are conscious of their own development and attainments shall submit submissively and indefinitely to the dictation of an imperialistic authority.

If we look at the British Empire today we see a great movement going on in that wonderful conglomerate of peoples of so many races, towards effecting a closer union of the Empire founded undoubtedly upon the recognition of the fundamental principle that no people or group of peoples ought to be bound by imperial laws or policies in whose formulation they have not taken part. A substantial proof of this constructive and refreshing movement is seen in the different suggestions and proposals which have been submitted from time to time by responsible statesmen and experts in political science in different parts of the Empire.³⁰ But the most substantial manifestation of this movement toward representation by the colonies in the affairs of the Empire may be found in the Imperial Conferences unpretentiously begun thirty-four years ago,³¹ and developed to

³⁰ A. B. Keith, *Imperial Unity and the Dominions* (1916); Lionel Curtis, *The Problems of the Commonwealth* (1916); W. Basil Worsfold, *The Empire on the Anvil* (1916); see also an article on *The Privy Council and Problems of Closer Union of the Empire*, in the *Journal of the Society of Comparative Legislation*, Vol. 17, pp. 30-44, by Arthur P. Poley.

³¹ "The decisions of this Conference may not be for the moment of vital importance; the business may seem prosaic, and may not issue in any great results at the moment. But we are all sensible that this meeting is the beginning of a state of things which is to have great results in the future. It will be the parent of a long progeniture, and distant councils of the Empire may, in some far-off time, look back to the meeting in this room as the root from which all their greatness and all their beneficence sprang." The Marquis of Salisbury, April 4, 1887. Jebb's, *The Imperial Conference*, Vol. I, p. 5; Keith's, *Imperial Unity and the Dominions*, *supra*. As to the history and development of imperial coöperation through the Imperial Conference since 1916,

a very large extent during and since the World War for the purpose of consultation previous to the shaping of foreign policies and mapping out the future courses of the Empire.³²

The great development and success of this movement toward a better understanding and closer union and coöperation between the mother country and the colonies is not, in my estimation, the result only of the material development in wealth, strength and population of the larger dominions of the Empire, but is also a direct consequence of that wonderful awakening of the conscience of the world to higher standards of civilization and respect for the opinions of mankind, which condemns everywhere all attempts made by large and powerful nations to control the destinies of other peoples without giving them a fair opportunity to express their minds and wishes upon the subject. The hour seems to be close at hand when colonies can no longer be held in a state of virtual bondage to the will or caprice of the metropolis, at least in matters which must needs affect their most vital interests and happiness. To the development of the larger dominions and colonies of the Empire which have reached their political majority and naturally seek to establish their right to be heard and heeded in the councils of the empire, there must be added the willingness of the mother country to listen to the grown-up sons who have ceased to be mere children and must now share the responsibilities and cares of conserving their future inheritance.³³

Even Spain, in spite of the unfortunate and disastrous blunders of her colonial system, had already and for a good many years previous to her total exclusion from the Western Continent, recognized this principle and granted to the Islands of Cuba and Porto Rico a very important representation. Newspaper reports seem to be the only available source; see, however, A. B. Keith's recent publication entitled *Dominion Home Rule in Practice*, 1921, Ch. VII, p. 53 *et seq.*

³² "The Conference comprises the Prime Ministers of the United Kingdom and the five Dominions (Canada, Australia, New Zealand, South Africa and Newfoundland), the Prime Minister of the United Kingdom being ex-officio President, and the Secretary of State for the Colonies, who takes the chair in the absence of the President. Other Imperial and Dominion ministers may attend its meetings to deal with their special topics, but not more than two representatives of any party can discuss any issue save with special permission, and each member has only one vote. The omission of India was deliberately decided upon in 1907 on the ground that India does not possess responsible government, but the omission became indefensible in view of the part played by India in the war, and the admission of India to be a regular member of the Conference is now accepted." A. B. Keith's *Dominion Home Rule in Practice*, page 54.

³³ "In view of the recognition accorded to the Dominions at the Conference of Paris regarding international affairs, it may well be suggested that the process whereby the unity of empire and the individuality of colony are developed and reconciled is reaching its perfect conclusion at this present time; dependence, independence and interdependence, as between mother country and colony and between both and other nations, are being worked out in all their manifold phases in a most startling manner." James Brown Scott, *Autonomy and Federation within Empire*, p. ix.

tion in the parliament of the kingdom. It is true that in the matter of colonial administration, Spain was far behind the spirit of the times; she always lacked a wise and far-sighted policy which should have insured to her the retention of her American colonies. It is indeed a sad result of her folly in this respect that she should have lost the last foot of territory on the Continent where she was once the mistress of a vast colonial empire. But in so far as this question of representation is concerned, it must be admitted that she was, at least during the last few years of her rule in America, the most liberal of all colonizing nations. The proof is, that even after she granted to those islands the so-called *autonomía*, which was a sort of home rule after more or less the fashion of her own institutions, she continued to accord to the said islands the same right of representation in the Spanish Cortes as before, which in the case of Porto Rico was equivalent to sixteen representatives and three senators in parliament. So that, as said by Señor Sagasta in a memorable document:

While the representatives of the insular people direct from their local chambers the special interests of their country, others selected by the same people aid and coöperate in the Cortes in the making of those laws in whose mould are formed and unified the different elements of Spanish nationality. And this is not a small or paltry advantage; still less does it furnish ground for surprise, as some might perhaps think, because this presence of the deputies from the Antillas in the Cortes is a close bond of the nationality which is raised above all the unities which live in its bosom, and is now sought as one of the greatest political steps in advance of our day by the autonomous English colonies which are anxious to take part in an imperial parliament in the supreme function of legislators and directors of the great British Empire.³⁴

Reflecting somewhat in a spirit of comparison between the old representation of Porto Rico in the Spanish parliament and the present representation of that island in Congress, the result would seem to be rather paradoxical and disappointing, especially when we look upon Spain as an atrabilarious, short-sighted, conservative and selfish nation in contrast with the United States as a highly progressive, far-sighted, liberal and idealistic people.

While it may be said, to the credit of the United States, that in this vast field of empire building, this great nation has taken an advanced step in the matter of colonial administration by adopting as a canon of its imperial policy the self-evident proposition that colonies and subjected peoples are no longer to be selfishly exploited for the benefit of adventurers, captains of industry and carpet-baggers, and that according to American principles the government in such cases must be administered upon high moral standards having as their aim the prosperity and progress of the colony and its inhabitants, yet in the matter of colonial representation the

³⁴ U. S. Foreign Relations, p. 634.

United States is lagging behind under a policy rather unworthy of its great achievements in the sphere of popular government.

The practical results of the present system of colonial representation of the United States, as exemplified in the case of Porto Rico, are indeed to subject the colonies and their people to a system of congressional dictation and imposition which is not at all promotive of good understanding and harmony, but may be a cause of future disagreement and embarrassment. In order to understand this proposition better, let us examine somewhat in detail some of the practical results of that system taken from the actual experience of Porto Rico.

To begin with, it should be remembered that some 150 years ago it was asserted by the American Colonies under the oppressive rule of George III, that taxation without representation is tyranny. And let us remember also that taxation in that case meant a material contribution of money, a taxation on property, which in the last analysis was only a pecuniary proposition.

Now, during the late World War, a greater, more vital, more exacting and more solemn taxation was imposed under American rule upon the island. It was not an ordinary taxation, not a money taxation, but a blood contribution, a terrible taxation, to be levied upon and collected from the flower of Porto Rico's manhood, for the purpose of raising a large national army, in an equal proportion with every one of the States.³⁵ And yet, this was done without having accorded to Porto Rico the same legitimate representation which was enjoyed by every one of the States of the Union in the matter of enacting such craft laws as were deemed necessary and proper for that purpose.

The same thing happened indeed in Hawaii, Alaska and the District of Columbia. It may be said, however, that in the case of Hawaii and Alaska, such results are to be ascribed to the transitional character of their status as Territories in preparation for ultimate statehood. As to the District of Columbia, other considerations of equal import may perhaps apply. Hawaii, Alaska and the District of Columbia, furthermore, are not strictly colonies or dependencies; they are considered in law and in fact as territories or integral parts of the United States. Porto Rico is held as standing in a different relation to the United States; it is merely a possession,

³⁵ The selective draft laws were extended to Porto Rico by acts of Congress, U. S. Stat. at Large, Vol. 40, pp. 76, 557. Dates for registration in Porto Rico were fixed and established by proclamations of President Wilson of June 27, 1917, June 11, 1918, and October 10, 1918. U. S. Stat. at Large, Vol. 40, pp. 1674, 1793, 1860. Actual registration took place on July 5, 1917, July 5, 1918, and October 26, 1918. According to statutory rule, Porto Rico's quota was supplied in the proportion that its population bears to the total population of the United States. The actual number of registrants was 240,886. To this figure should be added the immense number of Porto Ricans of draft age who on account of actual residence in this country were drafted or volunteered in the several States.

a dependency, a people bound to the United States by different juridical and political ties, the ties which are deemed to subsist between the imperial state and a subjected people. Ethnically, historically and geographically, Porto Rico is an entirely different people. They are, however, good American citizens. As a matter of history, they volunteered their services in large numbers and even demanded as a right pertaining to them as such American citizens, to share in the burdens and sacrifices thrust upon the nation by the World War. Nothing, however, could really justify the lack of representation of Porto Rico in a matter so directly affecting the collective and individual life of its people. The attitude of Porto Rico during the whole period of the war is really deserving of credit and praise.³⁶ But, as a matter of principle, it cannot be denied that compulsory military service should not have been extended to Porto Rico without a previous grant to that island of adequate representation in the enactment of those laws. In fact, the people of Porto Rico ought to have had a legitimate, adequate and effective representation in both Houses of Congress not only in the enactment of said laws, but also in the declarations of war. That is to say, no such exacting taxation, no such blood contribution, no such heavy charges and sacrifices brought on by the war should have been imposed upon Porto Rico without first having given to that island a legitimate, adequate and effective representation in Congress. The same is undoubtedly true with respect not only to those laws which directly or indirectly concern the interests of Porto Rico, but also to all other national measures which must necessarily affect the social, political or economic life of the island. And that representation must be capable of effectively influencing legislation by means of the exercise of the voting power, without which all representation, in the case of Porto Rico as in the case of any other colony or dependency, must be considered as illusory and wholly inadequate.

It does not seem reasonable that when considering and adopting a measure such, for example, as the free sugar proposition under the so-called Underwood Tariff Act,³⁷ which nearly ruined the island, and was fortunately repealed before it could go into operation,³⁸ Porto Rico should have had no adequate representation in both Houses of Congress to assert and defend the Porto Rican position upon a matter which, although not exclusively Porto Rican, so largely was to affect the whole economic life of that island.³⁹

³⁶ See Reports of the Governor of Porto Rico to Secretary of War, 1917, 1918, 1919. See also an article published in the *New York Herald*, Aug. 11, 1918, by Henry Wise Wood on "Porto Rico's demand to fight for the Flag."

³⁷ U. S. Stat. at Large, Vol. 38, p. 131. This law was approved by President Wilson on Oct. 3, 1913.

³⁸ U. S. Stat. at Large, Vol. 39, pp. 56, 57, approved by President Wilson April 27, 1916.

³⁹ Under the Underwood Tariff Act sugar was to be admitted into the United States free of duty after May 1, 1916. By abolishing the duty on sugar, the main source

The problem of colonial representation, at least in so far as it refers to Porto Rico, can not be easily eliminated, and much less satisfactorily solved by investing that island with the status of a so-called "Incorporated Territory" of the United States, with all the juridical, political and economic results implied in such a status, because the people of Porto Rico have already outgrown the expediency of that solution.⁴⁰ If account is taken of the present state of development and progress of Porto Rico, as well as of the rising sentiment there for a larger participation in its government by its people, the conclusion is inevitable that Porto Rico is where, sooner or later, the United States will be confronted with the unavoidable necessity of solving the problem of colonial representation. It is true that this problem may indeed involve very serious elements of complexity and doubt, but at all events its solution must be undertaken wholeheartedly, as it will probably determine the ultimate policy of the United States in the Caribbean. And it is for this reason that this problem of colonial representation must be studied in special relation to Porto Rico.

While no one can at the present time say with any degree of certainty what will be the ultimate disposition to be made of that island, the odds now seem to be ten to one that it will be retained by the United States, as said by President Harding, under a permanent policy of prosperity and progress for the island. In this connection, it may be said that Porto Rico looms up as a big national problem of the first magnitude, the principal elements of which are indeed its geographical position, the character and present development of its inhabitants, and the national and international implications of the situation.⁴¹ Commonly the suggestion is made that there are two straight solutions to this problem: one is independence; the other is statehood, on an equal footing with the other States. As to the former, public sentiment and the policy of the Government in this country would seem to manifest an ever-increasing opposition to the establishment of any new little republic in the Caribbean. As to the solution of statehood on an equal footing with the other States, it may be said that public opinion has not as yet crystallized in this country in favor of that solution, for there is indeed some apparently insurmountable prejudice among the people as to the expediency and advisability of admitting into the Union a people fundamentally different from the people of the United States. The schemes

of wealth of Porto Rico, namely, the sugar industry, would have been entirely crippled if not completely destroyed. It is entirely certain too that by this measure Porto Rico would have been deprived of the most practical advantage which it now enjoys under the policy of free trade between the United States and that island, as Porto Rico would have been placed so far as this commodity is concerned, in the same condition as a foreign country.

⁴⁰ See Report of the Governor of Porto Rico for 1918; also Porto Rico as a National Problem, "Mexico and the Caribbean," pp. 333-363.

⁴¹ See an address by the present writer on "Porto Rico as a National Problem," *supra*.

of some over-zealous and well-meaning Americans of establishing another new doctrine in the American system of government by which new States may be admitted into the Union on a footing of inequality with and inferiority to the other States, are objectionable and dangerous to American institutions and probably will never be countenanced by the American people.⁴² On the other hand, no self-respecting people will ever submit to a permanent and indissoluble Union which would degrade them from equal rank with the other States. If any such schemes should ever be carried into practice, this Union would soon deteriorate, for it is the policy of equality which holds the people of the United States together; it is that policy which makes peoples friends and contented. The policy of inequality breeds discontent and enemies and should be entirely rejected.

Personally, the present writer is not a believer in the final solution of Porto Rico's status at this time. In his opinion, neither independence nor statehood are the proper solutions of the problem now. In the many uncertainties of the present and the vast possibilities of the future, no one can say at this time, not even the most far-seeing statesman, what will be the ultimate solution which it will become advisable to give to this problem. We are witnessing a wonderful change in the sphere of international law and order; we are going through a veritable revolution in the field of political ideas; the march of civilization and the unforeseen events of tomorrow may bring about changes which may make logical consequences of future conditions of fact, things which today would appear to be chimerical and absurd. On the other hand, there are substantial reasons why no attempt should be made to determine the ultimate status of Porto Rico now. As to the solution of statehood, it may be said that although in the last twenty years, under the Stars and Stripes, Porto Rico has made wonderful progress along the lines of practical Americanization in consonance with the possibilities of the situation, this is not a lapse of time long enough to test whether the various interests of Porto Rico and the United States can be harmonized for the benefit of both; twenty years is not enough to show whether the Porto Rican people can be thoroughly amalgamated with the people of the United States in order to produce a perfect and indissoluble Union, as that implied in that status. Statehood is in its legal and political implication a permanent status of a very rigid character from which no withdrawal is possible, and if in the course of years it should be shown that no such amalgamation and perfect Union is possible or beneficial, or that it was prejudicial and injurious to either

⁴² An example of these schemes may be found in a joint resolution introduced in the House of Representatives in April last, proposing an amendment to the Constitution of the United States to empower Congress to fix and determine the representation in Congress of overseas and non-contiguous territories now or hereafter acquired as territories, possessions or dependencies of the United States, *upon their admission and thereafter as a State of the United States*. H. J. Res. 68, 66th Congress, 1st sess.

Porto Rico or the United States, or both, there would be created an anomalous situation with no possible remedy in sight.

It is worthy of notice in this connection that the most important objection made by those who oppose Porto Rico's admission into the Union on an equal footing with the other States is precisely the constitutional representation which in such case would appertain to that island. As is quite well known, Porto Rico has a total population of nearly 1,300,000. This would give it six representatives in the House at the present ratio of representation fixed by Congress upon the census of 1910,⁴³ besides the two senators which it would be entitled to have as a State under the Constitution. It is assumed by the opponents of Porto Rico's admission to statehood that such a representation from Porto Rico in the enactment of national laws might give to the island the balance of power in Congress, and that, on suitable occasions, Porto Rico would be enabled to dictate its point of view to the nation. Now, this assumption is just as harmful and unfair as it is absurd and ridiculous. Maryland, Nebraska and West Virginia have six representatives and two senators each, just the same as Porto Rico would have if admitted as a State of the Union; yet, who ever heard of any of these States, or any other for that matter, dictating its own points of view to the nation in Congress? New York has a representation in Congress of 43 representatives, Pennsylvania 36, and Illinois 27; yet who ever heard that the representation of any of these larger States ever became a dangerous bloc in Congress? The same contention was at one time advanced against the admission of the western States to the Union; the same contention was also expressed as to the possibility of the people of the former territories coming into Congress as a bloc and endeavoring to play the rôle of virtual arbitrators of the destinies of the United States. Has not, however, our national experience demonstrated the unreasonableness, the absurdity of these contentions?

There is a point on this question which seems to be ignored by those who advance these unfortunate and ill-advised contentions. The senators and representatives of the several States of this Union are not bound by any particular instructions from their constituency except as manifested by the majorities of the people at the polls; they are not bound by any secret alliance to any local design against the nation. They retain their power of individual analysis and consideration of every measure introduced in Congress and exercise their personal judgment and discretion in the matter of supporting or rejecting it as each of them shall deem it con-

⁴³ The present ratio of apportionment under the census of 1910 is one representative for every 211,877 inhabitants. There are at the present time two bills pending in Congress to readjust the apportionment of representatives under the Constitution (H. R. 6991, and H. R. 7080). There are also pending various joint resolutions in both Houses of Congress proposing amendments to the Constitution in respect to representation. H. J. Res. 36, 37 and 80; S. J. Res. 44 and 47.

sistent with his own personal convictions and the dictates of his loyalty and devotion to the Union. Why should we assume that Porto Rico's representation would follow any other course than that which is marked out by patriotism and common sense? Why should we assume that Porto Rico's representation would not live up to the same standards as the representatives of the other States? Why should we assume that they would not uphold the sacred traditions and the glorious institutions, and support to the best of their knowledge, ability and strength the highest interests of the nation? Reason, good faith and trust are better counsellors than prejudice, unfairness and suspicion.

As to the solution of independence, the present writer's opinion is that it is not to be desired, at least at the present time, nor even in the immediate future, unless the people are well prepared for the purpose, and there is a well-defined and earnest purpose on the part of the United States to respect the sovereignty, territorial integrity and political independence of the government to be established in the island. If no such preparation really exists and if no such purpose is entertained, it will be indeed a great deal better to leave Porto Rico's status as it is today. Furthermore, the instability of the world's affairs, on the one hand, and the unsettled conditions in the Caribbean, on the other, make it uncertain whether the creation of a Porto Rican Republic would be at all advantageous to either Porto Rico or the United States. More small republics are not indeed to be desired on this continent, as their helplessness renders their existence precarious and a source of possible disturbances and war.

On the other hand, the Caribbean policy of the United States is still in a state of formation. No one can say at the present time what that policy will be in the immediate or the distant future. So far as it can be conjectured from the present state of things, the policy of the United States in the Caribbean is now confined to the solution of questions demanding immediate attention without entering into an exact determination of the ultimate purpose of the United States in respect to the future destinies of the countries bordering on that turbulent region of our Continent; and while there are those who would gladly see the United States advance its boundaries to the Panama Canal, there are others who do not believe in any such policy of territorial aggrandizement at the expense of weak and helpless peoples; those who are willing to compromise on this point would prefer, perhaps, to have the United States strengthen rather than weaken its position in the Caribbean, but not to the extent of incorporating such vast extensions of territory inhabited by millions of alien and unassimilable peoples, whose disposition would surely become a source of great perplexity to the United States. Perhaps the latter view will eventually prevail; but at any rate, the policy of the United States in the Caribbean is not at all definite and clear, and no solution of Porto Rico's status should be under-

taken now which might be a hindrance to a healthy development of that policy in the future.

In this connection it may be said that in the matter of adjusting the exact political relations which should exist between the United States and Porto Rico, care should be exercised not to be impressed too deeply by the contentions of the extremists; there is indeed an undeniable flexibility and ease in the present status of the island which permits the United States to deal with it in the manner best calculated to promote its own interests and the welfare and happiness of the Porto Rican people, until a later time when the changes, the fruits of the present upheavals, are all accomplished and the world has again settled down to its ordinary routine of life; when we of the present generation or our posterity shall know what is best.

In the meantime, however, the situation does give rise to very important problems of government. Porto Ricans in the first place should be made to feel that they are not American citizens merely by name; they should be made to feel that they have been really taken into the great American family; and in view of the wonderful record made by the island in the last twenty years, under the Stars and Stripes, nothing less than complete self-government in local matters and an adequate representation in Congress should be accorded to them as a token of confidence in their ability and appreciation by the American people of their loyalty and devotion to the United States. In determining our policy in Porto Rico we should, moreover, look upon that island as something very valuable over and above the material considerations of military and commercial advantages which are derived by this country from its physical possession and control.

If we are to use our opportunities in Porto Rico, we should deal with it as an experimental field for the development of a far-sighted colonial policy aimed at a closer Union of the different parts of the American Empire, appealing to the natural aspirations of the people by making membership therein desirable, and serving at the same time as a means to test the capacity and disposition of the people for their ultimate admission into the Union as a State thereof, on an equal footing with the other States. And in the furtherance of that policy, American colonies and dependencies should be given an adequate representation with voice and vote in both Houses of Congress with such limitations or restrictions as should be deemed advisable or expedient.

The potential scope of the doctrine of incorporation laid down by the Supreme Court in the Insular cases could easily be extended so as to facilitate the working out of a constructive formula along this line of progress.⁴⁴

⁴⁴ See note 22, *supra*.

EDITORIAL COMMENT

THE PEACE TREATIES

The contractual stipulations of the three peace treaties between the United States and Germany, Austria and Hungary, respectively, are comprised in two articles in each treaty which are so nearly the same in all that the following comments on these provisions in the German treaty will apply equally to the others.

By Article I of the treaty with Germany that Government undertakes to accord to the United States and agrees that the United States shall have and enjoy all the rights, privileges, indemnities, reparations or advantages specified in the Congressional Peace Resolution, by which resolution the United States reserved to itself and its nationals "any and all rights, privileges, indemnities, reparations or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have become rightfully entitled; or which under the Treaty of Versailles have been stipulated for its or their benefit; or to which it is entitled as one of the Principal Allied and Associated Powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise."

Article I further provides that the United States shall fully enjoy all the rights and advantages stipulated for its benefit in the Treaty of Versailles notwithstanding the fact that such treaty has not been ratified by the United States.

No qualification or limitation is imposed by this treaty upon the enjoyment by the United States of any of the broad rights and powers reserved to it by the Peace Resolution, but with a view to defining more particularly the obligations of Germany under Article I with respect to certain provisions of the Treaty of Versailles, Article II of this treaty specifies:

(1) That the rights and advantages stipulated in that Treaty for the benefit of the United States, which it is intended the United States shall have and enjoy, are those defined in Section 1, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV.

The United States in availing itself of the rights and advantages stipulated in the provisions of that Treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions.

(2) That the United States shall not be bound by the provisions of Part I of that Treaty nor by any provisions of that Treaty including those mentioned in Paragraph (1) of this Article, which relate to the Covenant of the League of Nations, nor shall

the United States be bound by any action taken by the League of Nations, or by the Council or by the Assembly thereof, unless the United States shall expressly give its assent to such action.

(3) That the United States assumes no obligations under or with respect to the provisions of Part II, Part III, Sections 2 to 8 inclusive of Part IV, and Part XIII of that Treaty.

(4) That, while the United States is privileged to participate in the Reparation Commission, according to the terms of Part VIII of that Treaty, and in any other Commission established under the Treaty or under any agreement supplemental thereto, the United States is not bound to participate in any such commission unless it shall elect to do so.

(5) That the periods of time to which reference is made in Article 440 of the Treaty of Versailles shall run, with respect to any act or election on the part of the United States, from the date of the coming into force of the present Treaty.

The provisions of the Treaty of Versailles, which are mentioned in subdivision (1) of Article II, above quoted, as those defining the rights and advantages stipulated in that treaty for the benefit of the United States which it is intended the United States shall have and enjoy, relate to the following subjects:

Section 1 of Part IV.—German colonies, embodying Germany's renunciation of her former overseas possessions in favor of the five principal Allied and Associated Powers.

Part V.—Military, Naval and Air Clauses, containing provisions for the establishment of inter-allied commissions of control over Germany's military, naval and aeronautical establishments as limited by the treaty.

Part VI.—Prisoners of War and Graves Clauses, relating to the repatriation of prisoners of war and interned civilians and the care of the graves of soldiers and sailors buried in enemy territory.

Part VIII.—Reparation Clauses, providing for the constitution and powers of the Reparation Commission in which the United States is entitled to permanent membership.

Part IX.—Financial Clauses, dealing with the application of Germany's assets to the payment of her liabilities under the treaty.

Part X.—Economic Clauses, dealing with commercial relations, previous treaties, debts, property rights and interests, contracts, prescriptions and judgments, mixed arbitral tribunal, industrial property, and social and state insurance in ceded territory.

Part XI.—Aerial Navigation Clauses, imposing obligations upon Germany with reference to the rights of aircraft of the Allied and Associated Powers in and over German territory until January 1, 1923.

Part XII.—Ports, Waterways and Railways Clauses, relating to international transit through German territory.

Part XIV.—Guarantees Clauses, providing guarantees for the execution of the treaty.

Part XV.—Miscellaneous Provisions, including a provision barring and extinguishing completely all pecuniary claims on the part of Germany or

her nationals, based on events which occurred prior to the ratification of the treaty, against any Allied or Associated Power.

The effect of this treaty, therefore, is to reserve to the United States all of the rights and advantages defined in these clauses which are of benefit to the United States, thus putting the United States on an equal footing with the other Allied and Associated Powers with respect to the exercise thereof so far as Germany is concerned.

In view of the circumstances out of which this treaty arose and the conditions which it was designed to meet, it may fairly be assumed that, like the Congressional Peace Resolution, it is based on the legal position that the victorious Powers in the war acquired certain rights against Germany which were recognized by the Treaty of Versailles and enured to the benefit of each of the belligerents by virtue of their participation in the war, irrespective of whether or not they participated in the Treaty of Versailles.

The United States has definitely adopted that position and, as stated in an editorial in this JOURNAL¹ on the Congressional Peace Resolution, which applies equally to this treaty, a reservation of these rights is notice to all concerned that the failure of the United States to ratify the Treaty of Versailles, and the making of peace with Germany independently of that treaty "was not intended to waive or relinquish these rights, so that the Allied Powers would not feel at liberty to dispose of the assets of Germany and arrange their commercial and financial relations with Germany without regard to the interests of the United States."

The Provisions of Part I of the Treaty of Versailles mentioned in sub-division (2) of Article II of this treaty comprise the Covenant of the League of Nations, and the United States now definitely provides that it shall not be bound by them, but it reserves to itself entire freedom of action for the future by the further provision that any action taken by the League of Nations or by the Council or Assembly thereof may become binding upon the United States if it expressly gives its assent thereto.

The provisions of the Treaty of Versailles mentioned in sub-division (3) of Article II of this treaty, with respect to which the United States stipulates that it assumes no obligations, relate to the following subjects:

Part II.—Boundaries of Germany. Part III.—Political Clauses for Europe. Part IV, Sections 2 to 8, relate to the disposal of Germany's former interests in China, Siam, Liberia, Morocco, Egypt, Turkey and Bulgaria, and the renunciation in favor of Japan of all her rights, title and privileges in Shantung. Part XIII comprises the Labor Sections.

On October 18, 1921, the Senate of the United States, in the exercise of its constitutional prerogative, adopted a resolution advising and consenting to the ratification of this treaty, seventy-two Senators being recorded

¹ Issue for July, 1920, p. 384.

in favor of ratification and twenty-three opposed, subject to the understanding, however, "that the United States shall not be represented or participate in any body, agency, or commission, nor shall any person represent the United States as a member of any body, agency, or commission in which the United States is authorized to participate by this treaty, unless and until an act of the Congress of the United States shall provide for such representation or participation," and subject also to the further understanding "that the rights and advantages which the United States is entitled to have and enjoy under this treaty embrace the rights and advantages of nationals of the United States specified in the joint resolution or in the provisions of the Treaty of Versailles, to which this treaty refers."

Neither of these reservations is of such a character as to delay the ratification of the treaty as they neither change the text of the treaty nor affect its meaning, so far as Germany is concerned. The first reservation merely determines the manner in which certain provisions of the treaty are to be carried out on the part of the United States as a matter of domestic policy and procedure, which in no way affects the rights of Germany under the treaty, and the other reservation is simply a declaration that the treaty shall be understood to mean precisely what it would naturally be understood to mean without that declaration, for the rights reserved by the treaty for the benefit of the United States unquestionably include the rights of its nationals.

We are thus assured of the reestablishment of an official status or peace with Germany by means of a treaty of peace rather than merely by unilateral declarations to that effect through the Congressional Peace Resolution, on the part of the United States, coupled with the declaration of the termination of the state of war, in the Treaty of Versailles, on the part of Germany.

In the situation which grew out of the conflict between the Senate of the United States and the Executive branch of the Government, with reference to the ratification of the Treaty of Versailles, during the last Administration, the Congressional Peace Resolution was adopted, by force of circumstances rather than by preference, as an alternative for a treaty of peace. The resolution furnished an effective solution of the problem presented by the deadlock formerly existing between the coordinate branches of the treaty-making power under our Constitution, but it was not regarded as an entirely satisfactory method of reestablishing peace with Germany, and was generally understood to have been adopted rather as a substitute for a treaty of peace in case a satisfactory treaty could not be secured.

The present Administration, therefore, is to be congratulated upon its notable accomplishment of negotiating a treaty of peace which has received the sanction of the Senate, as required by the Constitution to make it effective.

CHANDLER P. ANDERSON.

THE ELECTION OF JUDGES FOR THE PERMANENT COURT OF INTERNATIONAL
JUSTICE

The Peace Conference meeting at The Hague in 1907 adopted a project of thirty-five articles dealing with the organization, jurisdiction and procedure of a Court of International—then called “Arbitral”—Justice. Owing to the fact that the project was new to most of the delegates, inasmuch as the only delegation instructed to lay it before the conference was the delegation of the United States, and owing also to the difficulty of the subject and the fact that the conference was occupied with many other and important matters, it was found impossible at that time and under those circumstances, to devise a method of appointing the judges generally acceptable to the nations. The conference therefore approved the project without an article dealing with the appointment of judges, and recommended the Powers to devise an acceptable method, and thus to constitute the Court.

The fourteenth article of the Covenant of the League of Nations took up the project where the Second Hague Conference left it, and directed the Council of the League to formulate a plan. In pursuance of this direction, the Council invited, in the course of 1920, a select body of jurists from different countries to prepare such a plan. They met at The Hague and devised a plan for the appointment of the judges acceptable to the Council, the Assembly of the League, and the nations at large.

The draft project of the court which the jurists prepared was not so fortunate. The Council made some alterations, and the Assembly of the League made many more, with the result that the document as finally adopted was to most intents and purposes similar to, if not identical with, the draft of 1907. The two great steps, however, had been taken; the acceptance of the plan of 1907 with certain modifications, and the method of appointing the judges which the conference of 1907 failed to devise.

The third and final step was taken on the 14th and 16th of September, when the judges and deputy judges of the court were elected at Geneva.

The project provides that the court shall for the present consist of eleven judges and four deputy judges; that each national group of the Permanent Court at The Hague shall recommend not more than four persons, of whom not more than two shall be of their own nationality; that the names of such persons shall be sent to the Secretary-General of the League, who shall lay them before the Assembly and the Council; that the Assembly and the Council shall proceed separately and independently of one another, to elect the requisite number of judges and deputy judges, bearing in mind that the judges should represent the main forms of civilization and the principal legal systems of the world; that upon a failure of the Assembly and Council to elect the requisite number of persons, each of whom is to receive an absolute majority of votes in the Assembly and Council, a con-

ference committee consisting of six members, three appointed by the Assembly and three by the Council, is to be formed at any time after the third ballot, which committee shall, by majority, recommend from the list of persons proposed, one or more for the positions unfilled, or unanimously, any one beyond the list of the Assembly and Council, for their respective acceptance, or, if the conference committee is satisfied that its recommendations will not be accepted by the Assembly and the Council, the members of the court already elected choose the balance of the court from among the candidates voted for in the Assembly or Council. In case of a tie, the vote of the eldest judge decides.

It must be a source of consolation to the advocates of an international court of justice that this method of election was tried, tested and was not found wanting. On the first ballot Messrs. Altamira of Spain, Anzilotti of Italy, Barbosa of Brazil, de Bustamante of Cuba, Lord Finlay of Great Britain, Loder of the Netherlands, Oda of Japan, and Weiss of France received an absolute majority, both in the Assembly and in the Council, sitting and acting separately. They were, therefore, elected. Mr. Moore, of the United States, was elected on the second ballot, and Messrs. Nyholm of Denmark, and Huber of Switzerland, on the sixth.

Unfortunately, the two bodies were unable to agree upon two of the candidates proposed, the Assembly choosing the distinguished American publicist, Alejandro Alvarez, of Chile, who, however, did not receive the absolute majority of the Council, and the Council choosing the distinguished Belgian publicist, Baron Descamps, who, likewise, failed to receive the absolute majority of the Assembly. Neither the Assembly nor the Council was willing to recede. The deadlock was broken by the selection of Mr. Huber.

Four deputy judges were to be appointed, and Messrs. Negulesco of Roumania, Wang of China, and Yovanovitch of Yugoslavia received the absolute majority in both the Assembly and the Council. The Assembly, however, voted for Mr. Alvarez, of Chile, and the Council, for Baron Descamps of Belgium. Neither body yielding its preference, a conference committee was appointed, which recommended Mr. Beichmann of Norway, who was thereupon elected by the Assembly and the Council, and the court was complete. It is ready to meet at The Hague to take up and to decide questions submitted to it by litigating nations, according to due process of law.

It was hoped that Mr. Elihu Root, who, as Secretary of State, directed the American delegation to the Second Hague Conference to propose an international court of justice, and who, as a member of the Advisory Committee of Jurists at The Hague in 1920, was responsible for the method of appointing the judges, would accept a seat upon the world's first International Court of Justice. He declined the proffered post because of age, although he is younger than the British representative. In his place the Assembly and Council naturally turned to Mr. John Bassett Moore.

The court is an admirable body, representing the different forms of civil-

zation and systems of law, and calculated not only to do justice between nations without fear or favor, but to their satisfaction.

One dream of the ages has been realized in our time.

JAMES BROWN SCOTT

DRAGO AND THE DRAGO DOCTRINE

Luis Maria Drago, the distinguished Argentine jurist, publicist and statesman, best known to our world as the author of the so-called Drago Doctrine, died during the past summer on June 9, 1921, in his sixty-third year, having been born on May 5, 1859, at Buenos Ayres. Trained as an advocate, the author of various legal works, occupant of important judicial positions, professor of civil law, elected this very summer an Associate of the Institute of International Law, his death is a grievous loss to his country, to the science of public law and to the world of letters.

His advocacy of a principle which would limit the use of force between states for the recovery of contract debts is of special interest to us because in a sense it was intended as a substitute for our Monroe Doctrine. That doctrine was originally founded on the theory that European intervention in the affairs of the Latin-American states was dangerous to our own peace and safety and to the integrity of our institutions. But it grew with our growth in power and has become a piece of paternalism which the states to the south of us resent. On the other hand, in spite of our disclaimers, it has been hard to avoid a certain responsibility for the conduct of the states which we endeavored to protect, a responsibility decidedly embarrassing.

So that there was a motive on both sides for desiring that instead of a protective policy there should be a self-denying ordinance in treaty form, which would bind European states not to intervene at least except in the plainest case of denied justice, and in no case on financial grounds.

Señor Charles Calvo must have the credit of being first in trying to bring this about. The Calvo Doctrine, however, was too broad, too thorough-going. It denied the validity of both diplomatic and armed intervention by one state in the affairs of another, for the enforcement of "any or all private claims of a pecuniary nature, at least such as are based upon contract or are the result of civil war, insurrection, or mob violence,"¹ claiming that foreigners are not entitled to greater protection than nationals in case of injury. Our own practice negatives this theory; it was narrowed and simplified by Dr. Drago.

The Drago Doctrine forbade the forcible collection of public debts. It was contained in a note to the Argentine Minister at Washington, written by Drago as Minister of Foreign Affairs. It was called out by the threat-

¹ Hershey, *Int. Law*. p. 162, n.

ened intervention in Venezuela of three European Powers. It was widely commented on. This was in December, 1902.

Arguing that forcible collection of debts implies territorial occupation; that such occupation easily entails conquest; that a state is bound to pay its debts but may choose its own time and convenience, that any other course is in derogation of State sovereignty, Dr. Drago suggested that the United States recognize the principle that "the public debt of an American state can not occasion armed intervention, nor even the actual occupation of the territory of American nations by a European Power." Secretary Hay answered in a non-committal way, but President Roosevelt in his message of December 5, 1905, gave this doctrine his warm approval, asserting that our own practice had always been in accord with it. For a full discussion of these two doctrines the reader is referred to Professor Hershey's article on the subject in the very first number of this JOURNAL.

The third Pan-American Conference in Rio de Janeiro, in 1906, presented this subject to the attention of the Second Hague Conference with such effect, backed as it was by the United States, that the Conference adopted a convention respecting the limitation of the employment of force for the recovery of contract debts. The gist of this is found in Article 1 as follows:

The contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals. This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or after accepting the offer, prevents any compromise from being agreed on, or after the arbitration fails to submit to the award.

This was by 1914 ratified by only seventeen out of the forty-five participants in the Conference and there were many reservations to the signatures. Yet it is a long step forward toward the avoidance of conflicts between states on pecuniary grounds. It is neither the Calvo nor the Drago Doctrine, being narrower than either and conditionally authorizing the use of force in debt collection as an eventuality. But both the Calvo and Drago Doctrines led up to it, particularly the latter.

With the German fleet at the bottom of Scapa Flow, a limitation of armament conference on the tapis, and the world in a chastened frame of mind, probably the efforts of Dr. Drago are nearer fruition than they ever were during his lifetime.

T. S. WOOLSEY.

ERNEST NYS, 1851-1920

In the death of M. Ernest Nys on September 5, 1920, the science of international law lost one of its most fruitful contributors, internationalism a leading advocate, the University of Brussels perhaps its most distinguished professor, and Belgium one of her most eminent jurists and publicists.

Professor Nys was born at Coutrai, Belgium, in 1851, and received his higher education at the Universities of Ghent, Heidelberg, Leipzig, and Berlin. Later he was granted honorary degrees by the Universities of Oxford, Edinburgh, and Glasgow. He began life as a member of the bench at Antwerp—his judicial career culminating in his appointment as member of the Permanent Court of Arbitration at The Hague, and President of the Chamber in the Court of Appeals at Brussels.


It was, however, in pursuance of his duties as Professor of International Law at the University of Brussels, and as one of the editors of the *Revue de Droit International et de Législation Comparée*, that he was most active as a contributor to the science of international law. For many years preceding the Great War, the files of the *Revue* bear witness to his prolific researches in the history of international law, more particularly during the Middle Ages. In 1894 many of these studies were published in book form under the title *Les Origines du Droit International*. This interesting collection was followed by two others (in 1896 and 1901 respectively) bearing the title *Etudes de Droit International et de Droit Public*. These volumes constitute a treasure containing a mine of historical research for any library that possesses them.

It would be impossible for us to give anything like a complete résumé or even bibliography of the many and various writings of Professor Nys. They include, for example, a valuable introduction to the text and translation of Francisci de Victoria's *De Indis et de jure belli relectiones*, published by the Carnegie Institution at Washington, in 1917. Suffice it to say that the work of Professor Nys as an authority on international law culminated in a sense in the publication (in three volumes, 1904-06) of a treatise entitled *Le Droit International, Les Principes, Les Theories, Les Faits*. This work was characterized by great learning, originality and vigor, and is a distinct contribution to the history and theoretical development of our science.

M. Nys was a distinguished member of a number of learned societies, including the Institute of International Law, of which he was a very active member, and the American Society of International Law, of which he was one of the few honorary members.

The writer of this memorial notice never had the good fortune of personal contact with Professor Nys; but if a deep and sympathetic appreciation of a man's writings confers a title of friendship, then one may perhaps be permitted to express a strong sense of personal sorrow over the passing of this wise, cultivated and liberal spirit. Certainly the cause of internationalism has suffered a great loss.

AMOS S. HERSHEY.



CURRENT NOTES

THE NOBEL PEACE PRIZE

With the advent of peace in Europe, consequent upon the deposit of ratifications of the Treaty of Versailles on January 10, 1920, the trustees of the Nobel Peace Prize were able to consider in an atmosphere of peace the services rendered to the cause of peace.

The peace prize was not awarded in 1914, 1915 or 1916. It was felt that the award for 1917 might properly be made to the International Red Cross of Geneva. This was accordingly done. No further award was made until December 10, 1920, when the peace prize for the year 1919 was awarded to Woodrow Wilson, then President of the United States, and for 1920 to Léon Bourgeois, of France.

The awards to these eminent publicists are not difficult to understand. Mr. Wilson had, before the entry of the United States into the World War, labored incessantly to bring the war to a close. After the armistice of November 11, 1918, he sought to secure a peace which would, in his opinion, render less likely, if it could not wholly prevent, the recurrence of future wars.

The case of Mr. Bourgeois, if not stronger, extends over a longer period of years. His advocacy of arbitration at the First Hague Peace Conference of 1899, was largely responsible for the acceptance of the Pacific Settlement Convention of that body. To his championship of peaceful settlement at the Second Hague Peace Conference of 1907, is likewise due in large measure whatever was accomplished in that line at that gathering, in which Germany blocked, as it seemed to many, every approach to peace. Mr. Bourgeois' advocacy of the League of Nations was the advocacy in concrete form of an intimate association of nations of which he had been the champion for many years.

That the award to each falls within the scope of the Nobel Prize is evident from the following extract from the will of Alfred Nobel, which creates, "a fifth [prize] to the person who shall have done most or the best work in the interest of the brotherhood of peoples, of the abolition or reduction of standing armies, as well as of the formation and propagation of peace congresses."

It is interesting to note the manner in which each recipient acknowledged the prize. Thus, Mr. Wilson said in a letter read by the American Minister to Norway:

In accepting the honor of your award, I am moved by the recognition of my sincere and earnest efforts in the cause of peace, but also by the very poignant humility before the vastness of the work still called for by this cause.

May I not take this occasion to express my respect for the far-sighted wisdom of the founder in arranging for a continuing system of awards? If there were but one such prize, or if this were to be the last, I could not, of course, accept it, for mankind has not yet been rid of the unspeakable horror of war.

I am convinced that our generation has, despite its wounds, made notable progress, but it is the better part of wisdom to consider our work as only begun. It will be a continuing labor. In the definite course of the years before us there will be abundant opportunity for others to distinguish themselves in the crusade against the hate and fear of war.

There is, indeed, a peculiar fitness in the grouping of the Nobel rewards. The cause of peace, and the cause of truth are of one family. Even as those who love science and devote their lives to physics or chemistry, even as those who create new and higher ideals for mankind in literature, even so with those who love peace, there is no limit set. Whatever has been accomplished in the past is petty compared to the glory of the promise of the future.¹

Mr. Bourgeois received the announcement while in attendance upon the League of Nations, and was informed by the President of the Assembly of the honor conferred upon him. In reply, he said:

Mr. President and my dear colleagues, the emotion which I feel prevents me from replying at length to the touching words of the President. I feel profoundly the unanimity with which the Assembly has associated itself with the President's words, and I will only make a very short reply. But it is a reply which comes from the bottom of my heart. If I have been greatly honored in being awarded this prize, I wish to attribute all the honor to my country for the very high distinction. In choosing me the Nobel Committee chose a Frenchman because it wished to point out and distinguish particularly the part played by France in putting forward the ideas which are common to all of us—France, the soldier of Right, whose sacrifices have surpassed all other nations. If France has thus acted in defending its liberty during the War, it will do the same in peace on behalf of justice which is the foundation of all peace. I am glad that the news arrived at a time when we were met together here at Geneva, for thus it forms a further encouragement to us to continue in our labors and to lay the indestructible foundation on which the peace and the freedom of humanity depend.²

Whether we be advocates or opponents of the League of Nations, it must be admitted that President Wilson brought it into being, and whether we approve or disapprove the part which Mr. Bourgeois took in framing the Covenant and in directing the League of Nations, we must acknowledge that for many years, in season and out of season, he stood for the Hague Conferences and the juridical organization of the society of nations. The good in the work of each will survive. The ultimate form which a league, or an association, or a society of nations shall assume, the future alone can decide.

JAMES BROWN SCOTT

¹ New York Times, Dec. 11, 1920, p. 11.

² Provisional Verbatim Record, 19th Plenary Meeting, First Assembly of the League of Nations, Geneva, Dec. 11, 1920, pp. 2-3.

FEDERAL LEGISLATION UPON CIVIL AERONAUTICS

Within the past year a large number of bills have been introduced in Congress to regulate the operation of civil aircraft in interstate and foreign commerce. The most recent of these is the bill (Senate 2448) of Senator Wadsworth, chairman of the Military Affairs Committee, which provides for the establishment of a Bureau of Aeronautics in the Department of Commerce, administered by a Commissioner of Civil Aeronautics. The Commissioner is given the power, with the approval of the Secretary of Commerce, to issue regulations having the force of law, to license pilots and register and license civil aircraft and airdromes; to establish the conditions under which civil aircraft may be used for transporting persons or property; to prohibit navigation over military, naval and postal areas; and to establish the rules of traffic applicable to air routes and stations. In addition to the exercise of these delegated legislative functions, the bill proposes that the Commissioner shall foster civil aeronautics by the establishment of air stations, meteorological services and signaling systems, as well as by research and the collection and publication of information upon a broad scale. The Commissioner is also charged with the duty of carrying into effect international aeronautical agreements and treaties.

The proposed legislation has evidently taken account of the difficulties in the way of complete national control of aerial navigation. It derives its authority under the interstate commerce clause of the Constitution and not under the treaty-making power or the admiralty clause; but the scope of national control is enlarged by extending its application to the airspace above navigable streams, rivers and waters of the United States, post roads and post routes, the District of Columbia, the Territories, dependencies and other areas over which the Federal Government has jurisdiction.

The necessity for national regulation has already been referred to in this JOURNAL. The special committee of the American Bar Association at its meeting at Cincinnati in September, recognized the imperative need of such legislation, and stated "that the law respecting aeronautics is the one fundamental vital problem of the actual commercial development of the art at the present time" (p. 27). While the committee has performed a valuable public service in emphasizing the importance of observing the constitutional requirements in adopting any new legislation upon aeronautics, it would appear to be most unfortunate if *all* national legislation upon the subject were to be deferred until an amendment to the Constitution be adopted granting complete jurisdiction to the Federal Government over aerial navigation. The committee seems to have favored this delay, and, indeed, it was upon this point that the report, although finally adopted, met with strong opposition when presented at Cincinnati. We believe, in

this particular, the committee has attempted a counsel of perfection, which, if followed, might meanwhile endanger the position of the United States in aeronautics. *Le mieux est l'ennemi du bien.*

The present bill should be the subject of careful consideration in respect of the grant of powers to the Federal courts. Upon constitutional grounds, it appears to be couched in terms much too general. Again, the exemption granted to owners and operators from liability for damages beyond the value of the aircraft, by a limited-liability clause analogous to that now applicable to sea vessels, will doubtless also meet with opposition. The policy of the bill in this respect differs from similar legislation in Great Britain under which the owner or charterer is held liable for actual damage caused by his aircraft, without requiring an innocent plaintiff to prove negligence. Of course, the stringent liability of the British Act does not apply to the claims of passengers or shippers.

Space does not permit of a more elaborate discussion of the bill. It will probably emerge only after careful consideration of the constitutional questions. The extent to which intrastate navigation must conform to Federal requirements so as not to interfere with, or create an undue burden upon interstate or foreign aerial commerce, may safely be left to the courts. The scheme of national regulation, whatever it ultimately proves to be, will undoubtedly form the basis of our treaty relations, and an early solution of the problems in some acceptable fashion, even though short of *ultima desiderata*, will be heartily welcomed.

ARTHUR K. KUHN.

THE INSTITUTE OF POLITICS

The first session of the Institute of Politics at Williamstown, Mass., notice of which was given in an earlier number of this JOURNAL,¹ took place from July 28 to August 27, last. The plan of the Institute was the idea of President Garfield of Williams College. Having no inclination to establish a summer school or summer session at the college along the lines which have become familiar in this country, he felt that there was a great opportunity to make use of the facilities of the college for a summer gathering to be devoted to the consideration of subjects of special interest. Prior to the war, he had outlined a plan for an institute of politics to be held during the college vacations. This the trustees of Williams College approved, offering the use of the college buildings for the purpose. With the entrance of the United States into the World War, it was impossible to carry the plan into execution. After the war was over, Dr. Garfield felt that the time was ripe for the realization of his idea. It needed, however, financial support for its accomplishment. This was secured through the generosity of Mr. Bernard M. Baruch of New York, who offered to provide for the maintenance of the

¹ January, 1921, p. 78.

Institute along the lines devised by Dr. Garfield for a period of three years. Mr. Baruch's gift was made upon the understanding that it should remain anonymous. It was not until toward the close of the Institute that, after repeated requests, the generous donor consented to permit his identity to be disclosed.

With this financial assurance, Dr. Garfield selected a Board of Advisors to assist him in the organization and in the preparation of specific plans for the sessions of the Institute. The Board of Advisors so selected consisted of the Hon. William Howard Taft as Honorary Chairman, Presidents E. A. Alderman of the University of Virginia, E. A. Birge of the University of Wisconsin, H. P. Judson of the University of Chicago, Professors A. C. Coolidge of Harvard University, P. M. Brown of Princeton University, J. B. Moore of Columbia University, J. S. Reeves of the University of Michigan and W. W. Willoughby of the Johns Hopkins University, and Dr. James Brown Scott of the Carnegie Endowment for International Peace.

The opening exercises held in Grace Hall, the beautiful auditorium of Williams College, included an address of welcome by President Garfield and addresses by Chief Justice Taft, President Lowell of Harvard University, and Mayor Peters of Boston.

The character of the exercises and the enthusiasm which they evoked were an excellent augury of the success of the first session. More than 150 men and women were enrolled as members of the Institute, about two-thirds of whom were members of college and university faculties. The representation was national in scope, institutions from Maine to Alabama and to the Pacific Coast being represented. Provision had been made for the housing of all the members in the comfortable dormitories of the College, and all met together for meals in the College Commons. This last proved to be one of the pleasantest features of the Institute. The charming surroundings of the College town and the Berkshire Hills, with the glorious weather throughout the session left nothing to be desired as to arrangements or conditions.

Invitations to become members of the Institute had been sent to men and women especially interested in the field of modern European history, international law and diplomacy, and economics. Naturally the majority of those responding affirmatively were associated with the various colleges and universities of the United States. Invitations, however, had not been limited to those in academic life, but were also extended to and accepted by a number of persons engaged in journalism, banking and other fields.

It had been decided to have the first session devote itself to international questions, considered especially with reference to the World War and the treaties of peace. The work of the Institute was to be of two kinds: lecture courses by distinguished lecturers from abroad, and round table conferences, conducted according to seminar methods, upon specific topics in the field of international relations.

The subjects of the various lecture courses and the lecturers were as follows:

- I. "International Relations of the Old World States in their Historical, Political, Commercial, Legal, and Ethical Aspects, including a Discussion of the Causes of Wars and the Means of Averting Them." The Right Honorable Viscount James Bryce.
- II. "Russia's Foreign Relations During the Last Half Century." The Right Honorable Baron Sergius A. Korff, former Vice-Governor of Finland.
- III. "Near Eastern Affairs and Conditions." The Honorable Stephen Panaretoff, Minister from Bulgaria to the United States.
- IV. "The Place of Hungary in European History." The Right Honorable Count Paul Teleki, former Premier of Hungary.
- V. "Modern Italy: Its Intellectual, Cultural and Financial Aspects." The Honorable Tomasso Tittoni, President of the Italian Senate and former Ambassador from Italy to Great Britain and France.
- VI. "The Economic Factor in International Relations." M. Achille Viallate, Professor in the *École Libre des Sciences Politiques*.

The very distinguished publicist, Dr. Luis M. Drago, of Argentina, had also accepted an invitation to deliver a course of lectures upon Latin-American problems. It was a matter of very keen regret that Señor Drago died shortly before the date set for his leaving for this country. For this reason, unfortunately, Latin-America was not represented among the lecturers.

Each course consisted of seven lectures. Arrangements have been made for the immediate publication of all of them in book form, each course to be comprised in a volume.

The Round-Table Conferences and their leaders were as follows:

- I. "The Balkan Question." Professors A. C. Coolidge and R. H. Lord of Harvard.
- II. "The Reparations Question." Norman H. Davis, former Under Secretary of State.
- III. "Treaties of Peace, especially the Treaty of Versailles." Professor J. W. Garner, University of Illinois.
- IV. "Boundaries of New Europe." Professor C. H. Haskins, of Harvard and Major Lawrence Martin of the Department of State.
- V. "Fundamental Concepts in International Law in Relation to Political Theory and Legal Philosophy." Professor J. S. Reeves, University of Michigan.
- VI. "Latin American Questions." The Honorable L. S. Rowe, Director General of the Pan-American Union.
- VII. "Tariffs and Tariff Problems." Professor F. W. Taussig of Harvard.
- VIII. "Unsettled Questions in International Law." Professor G. G. Wilson of Harvard.

Each of the round-table groups comprised from twenty to twenty-five members and from them the public was excluded. Opportunity was thus afforded for informal presentation and discussion. Interest in the particular questions considered was greatly increased by the frequent presence of the lecturers, who participated in the discussions. This was particularly the case in the round-table conducted by the Hon. Norman H. Davis upon the reparations question, of which M. Casenave, the French High Commissioner, was a member, and of the round-tables upon the new states of Central Europe and upon Latin-American questions in both of which Lord Bryce took an active part and to which he contributed greatly. Notwithstanding the popular interest shown in the public lectures held in Grace Hall, which was frequently filled to its capacity, it was generally conceded that the spirit of the Institute was best shown in these informal round-table gatherings, which were conducted so as to insure studious effort on the part of each member and to invite the frankest expressions of individual opinion.

The plan of the Institute was such as to eliminate at every point possible the opportunity for propaganda in behalf of particular causes or of institutions. The points of view of the various lecturers differed very widely. While in some instances the lecturers presented a more or less elaborate exposition of particular nationalistic positions, it soon became evident that each felt perfectly free to set forth his own personal position. The Institute of Politics had no propaganda to encourage or cause to advocate, except the full, free, and rational discussion of international problems. The same may be said of the round-table conferences. Throughout the session a spirit of enthusiastic interest and of respect for divergent opinions was manifest.

The Institute closed with a banquet at which the principal speaker was the Honorable Elihu Root, who in eloquent words acclaimed the purpose and results of the first session and showed the urgent necessity, in these days when democracy claims control of international affairs, that such control proceed from an enlightened and instructed democracy.

The munificence of Mr. Baruch having made possible the continuation of the Institute for at least two more sessions, plans have proceeded to this end; and it is expected that a programme for next year's session will be announced by the first of January. The subject for the session of 1922 will also be international relations, with more particular attention to the problems of the Far East. It is probable that the arrangements for the next session will be similar to those of the last and that, while the membership of the Institute will again be by invitation, and therefore necessarily limited, the number of the round-table conferences will be somewhat increased. The early announcement of the session of 1922 ought to make it possible for many men and women specially interested in the field of international relations and international law to be present.

The first session of the Institute of Politics was an unqualified success. In 1922 it will afford an opportunity for the serious consideration of international problems such as is rarely offered.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD MAY 16—AUGUST 31, 1921

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary Papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review. *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Cur. Hist.*, Current History (New York Times); *Daily digest*, Daily digest of reconstruction news; *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario official (Brazil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenossische gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe*, L'Europe Nouvelle; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. M. S.*, League of Nations Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice. *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue international de la Croix-Rouge; *Staats.* Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

January, 1921.

- 30 SWITZERLAND. Amendment to Article 89 of the federal constitution providing for referendum on treaties, was accepted by large majority vote of the people. *Am. Pol. Sci. Rev.*, Aug., 1921, p. 423.

February, 1921.

- 15 (?) ARGENTINA—ITALY. Ratification of treaty concerning indemnification for labor accidents exchanged in Buenos Aires. *P. A. U.*, July, 1921, p. 90.

March, 1921.

- 13 ITALY—TURKEY. Economic agreement signed at London, Text: *Temps*, May 28, 1921, p. 2.
- 16 GERMANY—SWEDEN. Switzerland abrogated treaty of commerce and navigation of May 2, 1911, effective March 16, 1921. *Reichs G.*, March 23, 1921, p. 234.
- 28 GERMAN—SIAMESE MIXED ARBITRAL TRIBUNAL. Regulations of procedure published. Text: *Reichs G.*, April 1, 1921, p. 345.

April, 1921.

- 14 WAR DATES. Reparations commission announced official dates on which periods of belligerency began, according to Art. 232 of Treaty of Versailles: Italy, May 27, 1915; Portugal, March 9, 1916; Greece, June 27, 1917; Czechoslovakia, Oct. 28, 1918. *Temps*, April 16, 1921, p. 1.
- 15 MOROCCO (French protectorate)—SWITZERLAND. Agreement concerning regulation of relations between the two countries promulgated in Switzerland. *E. G.*, April 20, 1921, p. 269.
- 18 BELGIUM—CZECHOSLOVAK REPUBLIC. Declaration signed providing for exchange of census information. *Monit.*, May 16/18, 1921, p. 4080.
- 19 BELGIUM—ROUMANIA. Belgium denounced commercial convention of June 5, 1906, effective April 19, 1922. *Monit.*, May 11, 1921, p. 3908.
- 20 to June 3. LITHUANIAN-POLISH CONFERENCE. Held in Brussels under Presidency of Paul Hymans. *Times*, June 4, 1921, p. 9.
- 22 GREAT BRITAIN—NORWAY. Agreement relating to suppression of capitulations in Egypt signed at Christiania. *G. B. Treaty series*, 1921, No. 10. *Cmd.* 1285.
- 27 FAR EASTERN REPUBLIC. Constitution adopted. Text: *Nation* (N. Y.), Sept. 14, 1921, p. 300.
- 29 BRAZIL—URUGUAY. Decree issued in Uruguay putting in force the regulations concerning the boundary commission, provided by convention of December 27, 1916. *D. O. (Uruguay)*, May 5, 1921, p. 4548.
- 30 MALTA. Self-government granted the island. *Cur. Hist.*, July, 1921, 14: 607.

May, 1921.

- 5 AUSTRIA—GERMANY. Proclamation issued in Germany renewing a series of agreements between Germany and separate German states and Austria and Austria-Hungary. List of agreements: *Deutsch. R.*, July 13, 1921, No. 161.
- 5 CHINA. Dr. Sun Yat-Sen became President of Southern Chinese Republic and issued appeal for recognition to all foreign powers. Text of proclamation: *Cur. Hist.*, Aug., 1921, 14: 749.
- 12 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. British House of Lords approved ratification. *Temps*, May 13, 1921, p. 1.
- 13 (?) AFGHANISTAN—TURKEY. Treaty signed at Moscow on March 1 ratified. Summary: *Temps*, May 14, 1921, p. 4.
- 13 AUSTRIA—BELGIUM. Convention of October 4, 1920 relative to application of Sec. III of Part X (Economic Clauses) of Treaty of Saint-Germain promulgated in Belgium. *Monit.*, June 26, 1921, p. 5225.
- 14 AUSTRIA—FRANCE. Treaty signed at Paris August 3, 1920, and ratified

- by both countries May 12, 1912, promulgated in France. *J. O.*, May 15, 1921, p. 5811.
- 14 FRANCE—NORWAY. Decree issued in France publishing the convention signed April 23, 1921, relative to wines and intoxicating liquors and putting it into force pending its ratification. *J. O.*, June 18, 1921, p. 6958.
- 14 GREECE—UNITED STATES. Treaty of commerce and navigation signed October 18, 1920, promulgated in Greece. [*Greece. Official Gazette*] May 11/24, 1921.
- 15 AUSTRIAN PEACE TREATY, Saint Germain, September 10, 1919. Ratification deposited in Paris by Japan. *J. O.*, May 15, 1921, p. 5810.
- 15 AUSTRIAN PEACE TREATY, Saint Germain, September 10, 1919. Ratified by the Chamber of Deputies of Portugal. *Temps*, May 16, 1921, p. 1.
- 15 BULGARIAN PEACE TREATY, Neuilly, November 27, 1919. Ratification deposited at Paris by Czecho-Slovakia. *J. O.*, May 15, 1921, p. 5810.
- 15 BULGARIAN—RUMANIAN BOUNDARY COMMISSION. Completed its inquiry regarding the Dobroudjan frontier. *Temps*, May 16, 1921, p. 2.
- 15 CZECHO-SLOVAK TREATY, Saint Germain, September 10, 1919. Ratifications deposited in Paris by Japan. *J. O.*, May 15, 1921, p. 5810.
- 15 RUMANIAN TREATY, Paris, December 9, 1919. Ratified by Japan. *J. O.*, May 15, 1921, p. 5810.
- 15 SERB, CROAT, SLOVENE TREATY, St. Germain, September 10, 1919. Ratifications deposited in Paris by Japan. *J. O.*, May 15, 1921, p. 5810.
- 17 BELGIUM—LUXEMBURG. Agreements signed at Brussels, by which Belgium became protector of Luxemburg. *Cur. Hist.*, Aug., 1921, 14: 869. Summary: *Europe*, June 18, 1921, p. 804.
- 18 BULGARIA—SERB, CROAT, SLOVENE STATE. Agreement reached concerning delivery of cattle from Bulgaria to Jugo-Slavia as provided by Treaty of Neuilly. *Times*, May 19, 1921, p. 9.
- 18 CANADA—WEST INDIES. Trade agreement ratified by Barbados Islands to go into effect July 1. *Canada. Dept. of Customs and Excise. Memo.*, June 21, 1921.
- 18 FRANCO—PERUVIAN ARBITRAL TRIBUNAL. Agreement signed fixing upon October 1, 1921, as date of meeting. *J. O.*, May 29, 1921, p. 6312.
- 18 POLAND—UNITED STATES. Appeal of Poland of May 11 for support in upper Silesian controversy and American reply of May 14 made public. Text of both notes: *Press notice*, May 18, 1921; *Wash. Post*, May 19, 1921, pp. 1, 4.
- 19 CABLE LICENSE BILL. S. 535, giving President authority over cable landings on American shores, signed by President Harding. *Cong. Rec.*, June 1, 1921, p. 1940.

- 19 FRANCE—RUSSIA. Agreements of April 1, 1874 relating to consular jurisdiction and regulation of succession denounced by France, to take effect May 19, 1922. *J. O.*, May 19, 1921, p. 5890.
- 19 INTERNATIONAL HEALTH CONFERENCE. Convened at Copenhagen with representatives from Denmark, Norway, Sweden, Finland, Germany, and Great Britain. *Temps*, May 22, 1921, p. 6.
- 19 SPAIN. New provisional tariff law went into effect. *Cur. Hist.*, Aug., 1921, 14: 848.
- 21 AUSTRIA—RUMANIA. Rumania made formal protest to Austria against proposed plebiscite on fusion with Germany. *N. Y. Times*, May 22, 1921, p. 1.
- 21 CHINA—GREAT BRITAIN. China's protest to Great Britain against Anglo-Japanese alliance made public. Text: *N. Y. Times*, May 20, 1921, p. 14.
- 22 CZECHO-SLOVAK REPUBLIC—FRANCE. Decree issued putting into effect the commercial convention signed at Paris, November 4, 1920. Text: *J. O.*, May 24, 1921, p. 6051.
- 23 to July 16. GERMAN WAR CRIMINALS. Trials held in Supreme Court at Leipzig. *Fortnightly Review*, Sept., 1921, p. 417.
- 23 TRADING WITH THE ENEMY ACT. War Trade Board Section of the Department of State announced amendment to General Enemy Trade License, effective May 23, authorizing all persons in United States to trade and communicate with all persons with whom trade and communication is prohibited by the Trading with the Enemy Act, subject to certain limitations. *War Trade Board*, p. 849.
- 24 ECUADOR—VENEZUELA. Arbitration treaty signed in Quito. *P. A. U.*, Sept., 1921, p. 301.
- 24 PERU—UNITED STATES. Protocol for arbitration of Landreau claim signed. *U. S. Treaty Series*, No. 653.
- 25 FRANCE—GREAT BRITAIN. French Government addressed note to British Government relating to property of French subjects in Russia. Summary: *Times*, June 9, 1921, p. 9.
- 25 FRANCE—ITALY. Decree issued in France putting into force treaty of immigration, etc., signed at Rome, September 30, 1919. Text of treaty: *J. O.*, May 29, 1921, p. 6294.
- 26 CHINA—UNITED STATES. Treaty of October 20, 1920, confirming application of a 5 per cent ad valorem rate of duty on importation of American goods into China by citizens of the United States, ratified by U. S. Senate. Text: *Cong. Rec.*, May 26, 1921, p. 1791.
- 26 ITALY—SPAIN. Spain gave notice that commercial treaty of March 30, 1914, would terminate on June 26. *Ga. de Madrid*, June 1, 1921, p. 886.

- 27 AUSTRIAN REPARATIONS. Japan and Czecho-Slovakia informed Finance Committee of League that they would waive their reparations claims against Austria for 20 years, France and Great Britain having already taken same action. *Wash. Post*, May 28, 1921, p. 5.
 - 27 GERMAN—SERB-CROAT-SLOVENE MIXED ARBITRAL TRIBUNAL. Regulations published in Germany. Text: *Reichs G.*, May 27, 1921, p. 692.
 - 27 JAPAN. Announced that a revised customs tariff law and import tariff schedule would go into effect on June 1. *Wash. Post*, May 28, 1921, p. 1.
 - 27 NETHERLANDS—UNITED STATES. New note on oil question sent to Holland on May 27. *N. Y. Times*, June 12, 1921, p. 16. Reply made public on June 23. *Wash. Post*, June 24, 1921, p. 5. Djambi oil measure excluding American interests from exploitation in Djambi fields became a law in Holland on July 1. *Cur. Hist.*, Aug., 1921, 14: 834.
 - 28 INSTITUTE OF INTERNATIONAL LAW. Extraordinary session held in Paris for election of new members. *Figaro*, Feb. 6, 1921, p. 2.
 - 28 LEAGUE OF NATIONS. Financial Committee issued report. *N. Y. Times*, May 29, 1921, p. 2.
 - 28 VESNITCH, MILENKO RADOMIR. Yugoslav minister to France died at Paris. *N. Y. Times*, May 29, 1921, p. 23; *Figaro*, May 29, 1921, p. 2.
 - 29 SOCIETY OF COMPARATIVE LEGISLATION (Paris). Celebrated its 50th anniversary. *Figaro*, May 30, 1921, p. 4.
 - 30 CANADA—UNITED STATES. Tariff corresponding to United States emergency measure put into effect in Canada. *N. Y. Times*, May 31, 1921, p. 17.
 - 30 SALZBURG PLEBISCITE. Result of vote gave 85,000 votes in a total of 102,000 in favor of union with Germany. *Figaro*, May 31, 1921, p. 3.
- June, 1921.
- 1 CHINESE CONSORTIUM. Text of notes and memoranda relating to the consortium and text of agreement of October 15, 1920, made public. *Nation* (*N. Y.*), June 1 and 8, 1921.
 - 1 SOVIET RUSSIA. Note of protest sent by Soviet Government to the governments of Great Britain, France and Italy against recent seizure of Vladivostok by Japanese troops. Text: *Soviet Russia*, Aug., 1921, p. 72. *Times*, June 10, 1921, p. 9.
 - 1 TACNA—ARICA PLEBISCITE. Recommended in message of President Alessandri to Chilean Congress. *N. Y. Times*, June 2, 1921, p. 12.
 - 2 AUSTRIAN—BELGIAN ARBITRAL TRIBUNAL. Regulations published. Text: *Monit.*, June 2, 1921, p. 4549.
 - 3 GERMAN REPARATIONS. Declarations of Governments of Belgium, France, Great Britain, Italy, and Japan, concerning modifications made in Annex II to Part VIII of Treaty of Versailles, made public in Germany. Text: *Reichs G.*, June 3, 1921, No. 58.

- 5 FIUME AGREEMENT. Commercial agreement signed by Italy, Jugoslavia and Fiume, under which port of Fiume is to be controlled by a consortium on which each state will appoint two members. *N. Y. Times*, June 7, 1921, p. 2.
- 5(?) GREAT BRITAIN—LIBERIA. Convention ratified regulating relations between tribes living on border line between Liberia and Sierra Leone. *G. B. Treaty series*, 1921, No. 7.
- 5 INTERNATIONAL LABOR OFFICE. Report of investigation by League of Nations Committee made public. *N. Y. Times*, June 6, 1921, p. 15.
- 7 CZECHOSLOVAK REPUBLIC—POLAND. International boundary commission fixed frontiers in region of Teschen and Oyava. *Temps*, June 8, 1921, p. 1.
- 7 LEAGUE OF NATIONS. Committee on amendments completed its sessions in London, after recommending three amendments to Covenant, and several important changes. *L. N. M. S.*, July 1, 1921, p. 30.
- 7 MEXICO—UNITED STATES. Secretary Hughes issued statement of proposal for establishing relations. Summary: *Cur. Hist.*, July 1921, 14: 711.
- 7 RUMANIA—SERB, CROAT, SLOVENE STATE. Defensive convention signed at Belgrade. Text: *Cur. Hist.*, Sept., 1921, 14: 947.
- 8 ANGLO-GERMAN MIXED ARBITRAL TRIBUNAL. Held first session. *Times*, June 8, 1921, p. 14.
- 8 CZECHO-SLOVAK REPUBLIC—RUMANIA. Boundary agreement concluded by exchange of communes. *Temps*, June 9, 1921, p. 2.
- 8 FRANCE—SPAIN. Spain notified France of intention to terminate on September 10, 1921, the *modus vivendi* of December 30, 1893, which regulated commercial relations between the two countries. *Ga. de Madrid*, June 17, 1921, p. 1044.
- 8 RUMANIA—SERB, CROAT, SLOVENE STATE. Agreement guaranteeing maintenance of status created by treaties of Neuilly and Trianon, signed at Belgrade. *Times*, June 10, 1921, p. 9. *Cur. Hist.*, July, 1921, 14: 698.
- 9 DRAGO, LUIS MARIA. Noted jurist and author of the Drago doctrine died at Buenos Aires, at age of 62 years. *N. Y. Times*, June 10, 1921, p. 13.
- 9 GREAT BRITAIN—SOVIET RUSSIA. Curzon replied to recent note of Tchitcherin in which protest was made to British and French Governments against Japanese at Vladivostok. Curzon declared the communication not acceptable and declined to enter into correspondence. *N. Y. Times*, June 10, 1921, p. 15.
- 10 CAUCASUS CONFEDERATION. Agreement for union of Armenia, Azerbaidjan and Georgia and the North Caucasus Republic of Daghestan signed in Paris. *Cur. Hist.*, Aug., 1921, 14: 878.

- 13 INTERNATIONAL LABOR OFFICE. Adopted Spanish as third official language. *Temps*, June 14, 1921, p. 1.
- 14 DOMINICAN REPUBLIC. Proclamation issued on June 14 by Military Governor stating conditions on which military forces would be withdrawn and self-government restored. Text: On June 25, the State Department issued order modifying and clarifying the previous order. *Cur. Hist.*, Aug., 1921, 14: 813.
- 14 ELBE SHIPPING AWARD. Announced by arbitrator. *N. Y. Times*, Aug. 3, 1921, p. 15.
- 15 AUSTRIAN—FRENCH ARBITRAL TRIBUNAL. Regulations published. Text: *J. O.*, June 15, 1921, p. 6818.
- 17 CENTRAL AMERICAN UNION. Provisional Federal Council began functioning at Tegucigalpa. *Cur. Hist.*, Aug., 1921, 14: 897.
- 17-28 LEAGUE OF NATIONS COUNCIL. Held 13th session in Geneva, for consideration of Aland Islands dispute, Polish-Lithuanian question, Albania, relief of Austria, mandates, etc. *L. N. M. S.*, July 1, 1921, p. 27.
- 17 PARAGUAY—URUGUAY. Arbitration convention ratified by Uruguay. *D. O. (Uruguay)*, June 21, 1921, No. 4586.
- 17 SWITZERLAND. New customs tariff announced to take effect July 1. *N. Y. Times*, June 18, 1921, p. 4.
- 19 GREECE. Allied powers sent offer to Greece to attempt mediation between the Greeks and Turkish Nationalists, but offer was refused on June 25. *Naval Inst. Proc.*, Aug., 1921, p. 1318. *Cur. Hist.*, Sept., 1921, 14: 1066.
- 19/20 SPAIN—SWEDEN. Provisional commercial agreement concluded. Summary: *Ga. de Madrid*, June 22, 1921, p. 1108.
- 20 to Aug. 5. BRITISH IMPERIAL CONFERENCE. Leading British and Colonial statesmen held conference in London on Empire problems. *Cur. Hist.*, Aug., 1921, 14: 849. *Spectator*, Aug. 13, 1921, p. 192.
- 21 INTERNATIONAL WIRELESS CONFERENCE. Opened in Paris with representatives from England, France, United States, Italy and Japan. *N. Y. Times*, June 22, 1921, p. 2.
- 21 LEAGUE OF NATIONS. Military, naval and air committee held fifth session in Geneva to consider limitation of armament and other questions. *L. N. M. S.*, July, 1921, p. 35.
- 22 AUSTRIA—FRANCE. Convention of August 3, 1920, concerning Austrian debts prolonged until August 31, 1921. *J. O.*, June 22, 1921, p. 7158.
- 22(?) CENTRAL AMERICAN UNION. Congress of Costa Rica rejected by vote of 20—19 a majority report favoring pact. *Press notice*, June 23, 1921.
- 22 IRELAND. King George opened Ulster Parliament in Belfast. *Cur. Hist.*, Aug., 1921, 14: 851.

- 23 GERMANY—UNITED STATES. Berlin announced that all American property held by Germany would be released immediately. *Wash. Post*, June 25, 1921, p. 5.
- 23 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Ratified by Japan. * *Temps*, June 25, 1921, p. 1.
- 23 HUNGARY. Applied for admission to League of Nations. *Temps*, June 24, 1921, p. 1.
- 24 ALAND ISLANDS. Awarded to Finland by League of Nations Council. Summary of decision: *L. N. M. S.*, July, 1921, p. 40.
- 24 COSTA RICA—UNITED STATES. Announced at San Jose that a protocol preliminary to a treaty by which Costa Rica will cede to United States rights along San Juan River had been signed by Costa Rica. *Cur. Hist.*, Aug., 1921, 14: 897.
- 25 INTERPARLIAMENTARY UNION. Headquarters moved to Geneva. *Adv. of peace*, Aug., 1921, p. 317.
- 26 FAR EASTERN REPUBLIC—JAPAN. Preliminary economic agreement drawn up by Japanese consul and Vice Foreign Minister of the Chita Government. *Wash. Post*, June 27, 1921, p. 1.
- 28(?) CZECHO-SLOVAK REPUBLIC—GERMANY. Treaty of commerce signed, *Temps*, June 29, 1921, p. 2.
- 29 BELGIUM—FRANCE. Agreement relative to regulations for liquidation of enemy property made public. *Monit.*, June 29, 1921, p. 5364.
- 29 SERB, CROAT, SLOVENE STATE. Constitution voted by Constituent Assembly, 223 to 35. *Wash. Post*, June 30, 1921, p. 6. *Cur. Hist.*, Aug., 1921, 14: 866. Text in part: *Europe*, July 30, 1921, p. 987.
- 30 to July 5. INTERNATIONAL CONFERENCE ON TRAFFIC IN WOMEN AND CHILDREN. Met in Geneva with 34 states represented. *L. N. M. S.*, Aug. 1, 1921, p. 70.

July, 1921.

- 1 AUSTRIA—UNITED STATES. Council of Ambassadors addressed note to United States asking postponement of claims against Austria for 20 years. *Naval Inst. Proc.*, Aug., 1921, p. 1317.
- 1 CHINA—GERMANY. Ratifications exchanged of commercial agreement signed at Peking on May 20. Text of various treaty documents: *Cur. Hist.*, Sept., 1921, 14: 1041.
- 1 CHINA—UNITED STATES. State Department replied to China's note of June 9 regarding support of rights of Federal Telegraph Company to erect wireless stations in China. *Press notice*, July 8, 1921.
- 1 INTERNATIONAL CHAMBER OF COMMERCE. Second congress closed in London. *Times*, July 2, 1921, p. 13.
- 1 MEXICAN OIL DECREES. President Obregon's recent decrees became effective which repealed the law of 1917 and put in force increased export duties on petroleum. *Naval Inst. Proc.*, Aug., 1921, p. 1313.

- 1 PEACE RESOLUTION. Senate Joint Resolution 16 terminating state of war between Germany and the United States and between Austria-Hungary and the United States passed Senate by vote of 38 to 19. Signed by President on July 2. Text: *Cong. Rec.*, July 1, 1921, p. 3454. *Public res.* No. 8.
- 1 POLAND—RUMANIA. Military convention signed March, 1921, ratified by Polish diet. *Temps*, July 3, 1921, p. 2.
- 2(?) AFGHANISTAN—PERSIA. Treaty signed establishing diplomatic and consular representation in both countries. *Temps*, July 2, 1921, p. 2.
- 2 CZECHO-SLOVAK REPUBLIC—RUMANIA. Military convention signed. *Temps*, July 6, 1921, p. 2. Summary: *Cur. Hist.*, Aug., 1921, 14: 870.
- 3 CENTRAL AMERICAN UNION. Note from Nicaragua made public urging removal of obstacles to Nicaragua's membership in Union. *Cur. Hist.*, Aug., 1921, 14: 896.
- 4 BRAZIL—UNITED STATES. International arbitration agreement signed by North American Chamber of Commerce and the Brazilian Federation of Commerce. *Wash. Post*, July 6, 1921, p. 5.
- 6 GERMANY—UNITED STATES. Proclamation issued in Germany concerning industrial property rights of nationals of the United States. *Deutsch. R.*, July 15, 1921, No. 163.
- 7 ANGLO-JAPANESE TREATY. Notification by British and Japanese Governments relative to continuation of agreement after July, 1921, sent to League of Nations. *L. N. M. S.*, Aug., 1921, p. 64.
- 8 GERMAN WAR CRIMINALS. France withdrew its mission to the Leipzig Court, and notified Allied Governments of its action. *N. Y. Times*, July 9, 1921, p. 1.
- 9 to Aug. 26. IRELAND—GREAT BRITAIN. Truce declared July 9. British proposals handed to Eamon de Valera on July 21. *Cur. Hist.*, Sept., 1921, 14: 952. Proposal rejected by De Valera on August 10. Text of British proposals of July 26, De Valera's letter of August 10, and Lloyd George's reply of August 13: *N. Y. Times*, Aug. 15, 1921, p. 1. *Round Table*, Sept., 1921, p. 759. De Valera again rejected British terms on August 24. On August 26, Lloyd George sent reply reiterating government's former standpoint that Ireland could not be permitted to withdraw from the empire. Texts of both letters: *N. Y. Times*, Aug. 27, 1921, p. 1.
- 10 CONFERENCE ON LIMITATION OF ARMAMENT. President Harding sent preliminary invitations to Great Britain, France, Italy, and Japan to participate in a conference, preferably in Washington. Acceptance received from France, Great Britain and Italy on July 12, and conditional acceptance from Japan on July 14. On August 11, formal invitations were sent out, including one to China. Texts: On July 27, Japan consented to sit in the conference. By the first week in

- August all the nations invited had accepted November 11 as the date for opening of conference. *Cur. Hist.*, Sept., 1921, 14: 917.
- 10(?) GREECE—TURKEY. New campaign begun by King Constantine against Turkish Nationalist forces under Mustapha Kemal Pasha for control of Asia Minor. *Cur. Hist.*, Aug., 1921, 14: 754.
 - 11 FAR EASTERN REPUBLIC—UNITED STATES. Note delivered to American minister at Peking urging United States to call upon Japan to withdraw military forces from Siberia. Similar notes sent to China and Great Britain. *N. Y. Times*, July 12, 1921, p. 14.
 - 12 ESTHONIA—LATVIA. Political and military agreement signed. *Weekly Review*, July 23, 1921, p. 69.
 - 12 FRANCE—GERMANY. France informed Germany that she will continue occupation of Rhine region until war criminals are punished. *N. Y. Times*, July 13, 1921, p. 3.
 - 13 MEXICO. President Obregon invited all countries whose nationals have suffered from Mexican revolutionists to appoint delegates to meet an indemnity board. *Wash. Post*, July 14, 1921, p. 3.
 - 14 DENMARK—GREAT BRITAIN. Agreement signed relating to the suppression of the capitulations in Egypt. *G. B. Treaty series*, 1921, No. 15.
 - 15 LEAGUE OF NATIONS. Blockade committee. Organization and list of members announced. *Wash. Post*, July 17, 1921, II, 14.
 - 16 DENMARK—GERMANY. Negotiations for transfer of North Slesvig to Denmark resulted in agreement on essential points. Negotiations adjourned till September. *Temps*, July 15/16, 1921, p. 2.
 - 16 GREAT BRITAIN—NORWAY. Temporary agreement signed at Christiania for establishment of air service between the two countries. *Times*, July 18, 1921, p. 9.
 - 16 HUNGARY. Promulgated decree relative to payment of debts, contracted before the war, to subjects of neutral countries. Text of decree: *Ga. de Madrid*, Aug. 10, 1921, p. 674.
 - 16(?) POLAND—RUMANIA. Commercial treaty concluded. *Temps*, July 17, 1921, p. 2.
 - 16 WIRELESS TELEGRAPH TECHNICAL COMMITTEE. Met at Paris with representatives from United States, Great Britain, Italy, Japan, and France. *Temps*, July 17, 1921, p. 6.
 - 18-21 INTERNATIONAL CHILD WELFARE CONGRESS. Held in Brussels. Voted to establish an international office for protection of childhood. *Times*, July 20, 1921, p. 12.
 - 19 DENMARK—SPAIN. Commercial treaty of July 4, 1893, prolonged for two months. *Ga. de Madrid*, Aug. 1, 1921, p. 529.
 - 20 CENTRAL AMERICAN UNION. Constituent Assembly met in Tegucigalpa to perfect a federal constitution and arrange for its signing on September 15. *Cur. Hist.*, Sept., 1921, 14: 1078.

- 20 FINLAND—FRANCE. Commercial convention signed at Paris July 13, 1921, promulgated in France. Text of treaty and protocol of signature. *J. O.*, July 21, 1921, p. 8438.
- 20 SPAIN—UNITED STATES. Parcels post convention signed February 4/March 1, 1921, promulgated in Spain. *Ga. de Madrid*, July 20, 1921, p. 358.
- 21 MEXICO. Announced that Spain and Japan had recognized Obregon government. *Cur. Hist.*, Sept., 1921, 14: 1076.
- 22 CZECHO-SLOVAK TREATY, Saint Germain, September 10, 1919. Ratified by France. *J. O.*, July 24, 1921, p. 8546.
- 22 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Ratified by France. *J. O.*, July 24, 1921, p. 8546.
- 22 RUMANIAN TREATY, Paris, December 9, 1919. Ratified by France. *J. O.* July 24, 1921, p. 8546.
- 22 SERB, CROAT, SLOVENE TREATY, St. Germain, September 10, 1919. Ratified by France. *J. O.*, July 24, 1921, p. 8546.
- 23 HELIGOLAND (Germany). People of island sent petition to League of Nations asking for neutralization of island under protection of League or reannexation to Great Britain. *N. Y. Times*, July 24, 1921, II, 1.
- 24 DANUBE RIVER. Internationalization convention signed. *Evening Star*, July 25, 1921, p. 4.
- 25-28. LEAGUE OF NATIONS. Consultative committee on communications and transit held first meeting in Geneva. *L. N. M. S.*, Aug. 1, 1921, p. 62.
- 26 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Ratifications exchanged at Paris. *N. Y. Times*, July 27, 1921, p. 5. *Europe*, July 30, 1921, p. 973.
- 27-29. BALTIC CONFERENCE. Held at Helsingfors with representatives from Latvia, Esthonia, Finland, and Poland. No definite political results. *N. Y. Times*, July 28, 1921, p. 15; *Times*, July 30, 1921, p. 10.
- 27 NORWAY—UNITED STATES. United States ratified an agreement signed June 30, 1921, for arbitration of claims of Norwegian subjects arising out of requisitions by U. S. Shipping Board. *U. S. Treaty Ser.*, 654.
- 28 HUNGARY—SOVIET RUSSIA. Agreement for repatriation of Hungarian prisoners in Russia signed at Riga. *Evening Star*, Aug. 1, 1921, p. 8.
- 28 to Aug. 26. INSTITUTE OF POLITICS. Held at Williamstown, Mass., under auspices of Williams College. *Wash. Post*, Aug. 27, 1921, p. 3.
- 28-30 INTERNATIONAL CONFERENCE ON MARITIME LAW. Held twelfth meeting in Antwerp. *Times*, Aug. 2, 1921, p. 7.
- 28 WAR TREATY. Treaty providing for a declaration of war on Hungary in the event of return of Emperor Charles to Hungarian throne signed by Rumania, Jugoslavia and Czecho-Slovakia. *Evening Star*, July 28, 1921, p. 1.

- 29 AERIAL NAVIGATION CONFERENCE. Anglo-French-Belgian conference closed its sessions at Brussels. *Temps*, July 29, 1921, p. 2.
- 31 GREAT BRITAIN—PERU. Switzerland consented to act as arbitrator in dispute concerning boundaries of certain petroleum wells in Peru belonging to an English company. *Wash. Post*, Aug. 1, 1921, p. 6.

August, 1921.

- 1 AUSTRIA—RUMANIA. Commercial treaty expired. Negotiations for a new one will begin on August 15. *Temps*, Aug. 14, 1921, p. 1.
- 1-13 INTERNATIONAL EMIGRATION COMMISSION. Met in Geneva to deal with suppression of abuses connected with emigration, etc. *N. Y. Times*, Aug. 3, 1921, p. 3. *Times*, Aug. 16, 1921, p. 7.
- 2 DANUBE SHIPPING AWARD. Walker D. Hines announced his decision as arbitrator. *N. Y. Times*, Aug. 3, 1921, p. 15.
- 2 FRANCE—GERMANY. Decree issued in France putting into force the convention signed June 30, 1920, relative to treasury of Alsace-Lorraine, ratified by both countries on July 23, 1921. *J. O.*, Aug. 4, 1921, p. 9111.
- 2 LITHUANIA—POLAND. Lithuanian delegate to the League refused to accept Council's solution of the dispute over Vilna territory. *Times*, Aug. 3, 1921, p. 7.
- 3 GERMAN INDEMNITY. Reparations Commission gave out information regarding division among the Allies of German payments. *Times*, Aug. 4, 1921, p. 7.
- 5 NORWAY—SOVIET RUSSIA. Terms of commercial agreement drawn up at Christiania agreed to by Norway. *Temps*, Aug. 6, 1921, p. 1.
- 6 FRANCE. Decree issued fixing composition of French delegations to international and European commissions on the Danube. *J. O.*, Aug. 17, 1921, p. 9646.
- 7 FRANCE—SWITZERLAND. Convention on customs zones signed at Paris. Text of preamble: *Temps*, Aug. 15, 1921, p. 2.
- 9 BOLIVIA—GREAT BRITAIN. Great Britain denounced treaty for the abolition of slave trade, signed at Sucre, Sept. 25, 1840. *London Ga.*, Sept. 27, 1921, p. 1.
- 9-10 ALLIED FINANCE CONFERENCE. Met in Paris, *Times*, Aug. 11, 1921, p. 9.
- 10 FRANCE—ITALY—MONACO. Decree issued in France approving and publishing text of agreement signed at Paris, December 7, 1918, between France and Italy on circulation of nationals in frontier zones and arrangement signed at Paris July 18, 1921, between France, Italy and Monaco on same subject. *J. O.*, Aug. 13, 1921, p. 9518.
- 10 GREAT BRITAIN. Order in Council issued putting into force certain sections of Hungarian peace treaty. Text of sections: *London Ga.*, Aug. 12, 1921, p. 6372.

- 10 GREAT BRITAIN. Order in Council issued declaring August 31 to be the date of termination of present war. *London Ga.*, Aug. 12, 1921, p. 6389.
- 10 GREAT BRITAIN. Egypt (Treaty of Peace, Hungary) Order in Council issued, relating to property of nationals of Hungary. *London Ga.*, Aug. 19, 1921, p. 6573.
- 10 TURKISH PEACE TREATY, Sèvres, August 10, 1920. Supreme Council declared that Greece and Turkish Nationalists were engaged in a private war, and proclaimed neutrality of England, France, Italy, and Japan. *Cur. Hist.*, Sept., 1921, 14: 1065.
- 14 CZECHO-SLOVAK REPUBLIC—SERB, CROAT, SLOVENE STATE. Military convention signed at Prague. *Temps*, Aug. 15, 1921, p. 2.
- 14 INTER-ALLIED FINANCIAL CONFERENCE. Concluded its sittings in Paris after signing agreement concerning division of German payments. *Times*, Aug. 15, 1921, p. 7.
- 15 INTERNATIONAL CONFERENCE ON RUSSIAN RELIEF. Opened at Geneva. *N. Y. Times*, Aug. 16, 1921, p. 2. *Temps*, Aug. 17, 1921, p. 4.
- 16 ALBANIA. Appealed to the League to keep the peace between Albania and Serbia. *Wash. Post*, Aug. 17, 1921, p. 2.
- 16(?) FRANCE—GERMANY. France sent note to Germany concerning suppression of economic sanctions, to begin September 15, if Germany agrees to terms. Summary: *Temps*, Aug. 18, 1921, p. 1.
- 16 INTERNATIONAL DANUBE COMMISSION. First session opened at Breslau, with representatives from France, England, Czecho-Slovakia, Austria, Hungary, Rumania, Bulgaria, Württemberg and Bavaria. *Temps*, Aug. 17, 1921, p. 4.
- 16 PETER I OF SERBIA. Died at Belgrade. *N. Y. Times*, Aug. 17, 1921, p. 11.
- 17 BARANYA. Council of ambassadors decided not to permit Baranya to form a republic. *N. Y. Times*, Aug. 18, 1921, p. 17.
- 17-20 INTERPARLIAMENTARY UNION. Nineteenth meeting held in Stockholm. *N. Y. Times*, Aug. 21, 1921, p. 3.
- 17 SERB, CROAT, SLOVENE STATE. Alexander proclaimed his accession to throne. *N. Y. Times*, Aug. 23, 1921, p. 3.
- 18(?) BRAZIL—UNITED STATES. Money order convention ratified by Brazil. *Evening Star*, Aug. 19, 1921, p. 1.
- 18 COSTA RICA—PANAMA. On June 27, Panama appealed to Secretary Hughes against White award in boundary dispute. Reply of June 30 said award must be accepted. *Cur. Hist.*, Aug., 1921, 14: 898. Further efforts toward settlement resulted in final statement from Secretary Hughes on August 18 that Costa Rica need delay no longer in taking jurisdiction over disputed territory. *Wash. Post*, Aug. 22, 1921, p. 1. On August 23, Panama conceded Coto to Costa Rica. *Wash. Post*, Aug. 25, 1921, p. 3. On August 24, President Porras

- issued protest against action of United States Government. *Wash. Post*, Aug. 25, 1921, p. 3.
- 18 ESTHONIA. Renewed its demand for admission to League of Nations. *Temps*, Aug. 19, 1921, p. 1.
- 18 HUNGARIAN PEACE TREATY, Trianon, June 4, 1920. Promulgated by France. Text: *J. O.*, Aug. 26, 1921, p. 9887.
- 20 SOVIET RUSSIA—UNITED STATES. Agreement providing for American relief for the famine districts of Russia signed at Riga. *Wash. Post*, Aug. 21, 1921, p. 4.
- 22 BARANYA. Hungarian troops began occupation of district awarded to Hungary. *N. Y. Times*, Aug. 23, 1921, p. 4.
- 23 COLOMBIA—UNITED STATES. Treaty for settlement of differences growing out of independence of Panama presented to Colombian Senate for ratification. *Wash. Post*, Aug. 24, 1921, p. 3.
- 23 EMIR FEISAL. Ascended throne of the Irak (Mesopotamia) as King. *N. Y. Times*, Aug. 24, 1921, p. 15. *Times*, Aug. 24, 1921, p. 7.
- 24 AUSTRIA—UNITED STATES. Treaty of peace signed at Vienna. *Wash. Post*, Aug. 25, 1921, p. 5.
- 24 CHINA—GREAT BRITAIN. Text published of Cassel Collieries Contract of April 1, 1920, between Great Britain and the defunct Kwantung Government in China. *Nation*, (N. Y.) Aug. 24, 1921, p. 212.
- 25 GERMANY—UNITED STATES. Peace treaty signed in Berlin. Text: *Wash. Post*, Aug. 26, 1921, p. 1.
- 26 ERZBERGER, MATTHIAS. Former Premier and Finance Minister of Germany, assassinated. *N. Y. Times*, Aug. 27, 1921, p. 1.
- 27 FRANCE—GERMANY. Treaty regulating payment of reparations signed at Wiesbaden. *N. Y. Times*, Aug. 28, 1921, p. 2.
- 27 RUSSIAN FAMINE RELIEF. Agreement signed at Moscow by Dr. Nansen and M. Tchitcherin. Text: *Europe*, Sept. 17, 1921, p. 1216.
- 28 GERMANY—ITALY. Commercial treaty signed at Berlin which will come into force on September 1. *Wash. Post*, Sept. 1, 1921, p. 5; *Times*, Aug. 31, 1921, p. 9.
- 29(?) ALBANIA. Agreement on boundaries, reaffirming frontiers of 1913, reached by Great Britain, France and Italy. *Wash. Post*, Aug. 30, 1921, p. 6.
- 29 HUNGARY—UNITED STATES. Peace treaty signed at Budapest. *Wash. Post*, Aug. 31, 1921, p. 1.
- 29 LEAGUE OF NATIONS COUNCIL. Met at Geneva to consider Silesian question. *N. Y. Times*, Aug. 30, 1921, p. 3.
- 30 AUSTRIA-HUNGARY. Occupation of West Hungary (Burgenland) by Austrian troops began. *N. Y. Times*, Aug. 31, 1921, p. 3.
- 30 INTERNATIONAL LAW ASSOCIATION. Thirtieth session opened at The Hague. *N. Y. Times*, Aug. 31, 1921, p. 3.

- 30 MEXICAN OIL RULING. Mexican Supreme Court handed down decision debarring Mexican authorities from denouncing oil rights held by Texas Oil Company prior to May 1, 1917. *Naval Inst. Proc.*, Oct., 1921, p. 1673.

INTERNATIONAL CONVENTIONS

AERIAL NAVIGATION. Protocol, Paris, May 1, 1920.

Ratification:

France. July 15, 1921. *J. O.*, July 31, 1921, p. 8982.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908. Protocol, March 20, 1914.

Adhesion:

Brazil. July 18, 1921.

Czechoslovak Republic. Feb. 22, 1921. *E. G.*, Aug. 31, 1921, No. 37.

EMPLOYMENT OF CHILDREN AT SEA. Genoa, July 9, 1920.

Ratification:

Great Britain, July 5, 1921. *London Ga.*, July 8, 1921, p. 5479.

EMPLOYMENT OF CHILDREN IN INDUSTRIES. Washington, November 28, 1919.

Ratification:

Great Britain, July 5, 1921. *Lond. Ga.*, July 8, 1921, p. 5478.

GENEVA CONVENTION. August 22, 1864. Revisions.

Adhesion:

Estonia. March 10, 1921. *J. O.*, May 26, 1921, p. 6114; *E. G.*, April 27, 1921, p. 323.

Ratification:

Czecho-Slovak Republic, December 1, 1920.

Finland. February 27, 1921. *Ga. de Madrid*, June 7, 1920, p. 949.

Greece. May 27, 1921. *Bundesbl.*, June 8, 1921, p. 445.

MERCHANDISE TRANSPORT BY RAILWAY. Berne, Oct. 14, 1890.

Adhesion:

Austria. July 25, 1921. *E. G.*, Aug. 31, 1921, No. 37.

MOTOR VEHICLES, INTERNATIONAL CIRCULATION OF. Paris, October 11, 1909.

Adhesion:

Czecho-Slovak Republic. February 28, 1921. *J. O.*, April 15, 1921, p. 4762.

NIGHT WORK OF WOMEN. Berne, Sept. 26, 1906.

Adhesion:

Austria. July 25, 1921. *E. G.*, Aug. 31, 1921, No. 37.

NIGHT WORK OF WOMEN. Washington, November 28, 1919.

Ratification:

Great Britain. July 5, 1921. *Lond. Ga.*, July 8, 1921, p. 5478.

NIGHT WORK OF YOUNG PERSONS. Washington, November 28, 1919.

Ratification:

Great Britain, July 5, 1921. *Lond. Ga.*, July 8, 1921, p. 5478.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, March 20, 1883. Revision. Brussels. December 14, 1900; Washington, June 2, 1911.

Adhesion:

Bulgaria. April 30, 1921. *Bundesbl.*, May 25, 1921, p. 231. *Monit.*, June 15, 1921, p. 4888.

Finland, August 2, 1921. *E. G.*, August 31, 1921, No. 37.

PROTECTION OF INDUSTRIAL PROPERTY [affected by the World War], Berne, June 30, 1920.

Adhesion:

Hungary. March 26, 1921. *Monit.*, May 6/7, 1921, p. 3804. *Reichs. G.*, May 3, 1921, p. 493.

Promulgation:

Netherlands, May 21, 1921. *Staats.*, 1921, No. 733.

SANITARY CONVENTION. Paris, January 17, 1912.

Adhesion:

Newfoundland. March 4, 1921. *J. O.*, May 21, 1921, p. 5954.

Promulgation:

Switzerland. April 27, 1921. *E. G.*, April 27, 1921, p. 245.

Ratification:

Colombia.

Rumania. May 26, 1921. *J. O.*, May 26, 1921, p. 6114.

SANITARY CONVENTION. Paris, December 3, 1903.

Denunciation:

United States. May 26, 1921. *Cong. Rec.*, May 26, 1921, p. 1798.

UNEMPLOYMENT CONVENTION. Washington, November 28, 1919.

Ratification:

Great Britain. July 5, 1921. *Lond. Ga.*, July 8, 1921, p. 5478.

UNIVERSAL POSTAL CONVENTION. Madrid, November 30, 1920.

Promulgation:

France (for all French colonies and French protectorates of Indo-China). May 4, 1921. *J. O.*, May 27, 1921, p. 6188.

Germany. March 22, 1921. *Reichs. G.*, March 24, 1921.

WHITE PHOSPHORUS IN MATCHES. Berne, September 26, 1906.

Adhesion:

Czecho-Slovak Republic. March 30, 1921. *J. O.*, May 31, 1921, p. 6346.

Rumania. July 21, 1921. *E. G.*, August 10, 1921, No. 34.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Bulgaria. June 15, 1921. *J. O.*, July 14, 1921, p. 8138.

Uruguay. June 30, 1921. *Ga. de Madrid*, August 4, 1921, p. 576.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Bolivia, Convention between the United Kingdom and, for the prevention of false indications of origin on goods. Signed at La Paz, April 5, 1920. (Treaty Series, 1921, No. 9.) 2d.

Bolshevism and Sinn Fein. Intercourse between. (Cmd. 1326.) 2d.

Brazil, Treaty between the United Kingdom and, providing for the establishment of a peace commission, signed at Rio de Janeiro, April 4, 1919. (Cmd. 1278.) 2d.

British Nationality and Status of Aliens. Regulations (India), March 17, 1921. (S. R. & O. 1921, No. 528.) 1½d.

Capitulations in Egypt, Suppression of the. Agreement between Great Britain and Greece. Athens, Aug. 22–Sept. 4, 1920. (Treaty Series, 1921, No. 5.) 1½d.

———. Agreement between Great Britain and Norway. April 22, 1921. (Treaty Series, 1921, No. 10.) 2d.

Copyright, international. Order in Council, May 27, 1921, amending the Order in Council of June 24, 1912, regulating copyright relations with the foreign countries of the Berne Copyright Union as regards Czechoslovakia. (S. R. & O. 1921, No. 956.) 2d.

East Africa. Convention between Great Britain and Belgium with a view to facilitating Belgian traffic through the Territories of East Africa, signed at London, March 15, 1921. (Treaty Series, 1921, No. 11.) 2d.

Ecuador, Trade and commerce of. Feb., 1921. *Dept. Overseas Trade*. 10d.

Egypt, Report on the economic and financial situation of. March, 1921. *Dept. Overseas Trade*. 1s. 1½d.

Finland, Report on the economic, financial and industrial conditions of, for 1920. *Dept. Overseas Trade*. 1s. 1½d.

Foreign Jurisdiction. The China (Amendment No. 2) Order in Council, Nov. 9, 1920. (S. R. & O. 1921, No. 866.) 2d.

———. The China (Amendment) Order in Council, Dec. 21, 1920, No. 3, 1920. (S. R. & O. 1921, No. 787.) 2d.

German Reparation (Recovery) Act, 1921. (II Geo. V, Ch. 5.)

———. Treasury Minute, March 24, 1921, relative to. (Cmd. 1251.) 1½d.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H.M. Stationery Office, Imperial House, Kingsway, London, W.C. 2.

German Reparation (Recovery) Act, 1921. Procedure. Supreme Court, England. Rules, April 4, 1921. (S. R. & O. 1921, No. 449.) 1½d.

———. Treasury Minute, May 17, 1921, relative to. (Cmd. 1329.) 2d.

Greece. Report on the industrial and economic situation. Feb., 1921. *Dept. Overseas Trade*. 1s. 10½d.

Hungary, Report on the commercial and industrial situation of. April, 1921. *Dept. Overseas Trade*. 1s. 4½d.

Liberia, Convention between the United Kingdom and, supplementary to the convention of Jan. 21, 1911. Signed at London, June 25, 1917. (Treaty Series, 1921, No. 7.) 2d.

Mandates. Draft for East Africa (British) as submitted for approval of League of Nations. (Misc. 1921, No. 14.) 2d.

———. Draft for Togoland (British) and the Cameroons (British) as submitted for approval of League of Nations. (Cmd. 1350.) 3d.

———. Economic Rights in Mandated Territories, Correspondence between His Majesty's Government and the United States Ambassador respecting. (Misc. 1921, No. 10.) 3d.

Mixed Arbitral Tribunals. Tribunaux Arbitraux Mixtes, institués par les Traités de Paix. Recueil des Décisions des. Nos. 1 and 2, April and May, 1921. *Foreign Office*. 3s. 6d.

Netherlands, General report on the economic, financial and industrial conditions of. Jan., 1921. *Dept. Overseas Trade*. 1s. 4½d.

Niger River. Convention between the United Kingdom and France supplementary to the Declaration of March 21, 1899, and the Convention of June 14, 1898, respecting Boundaries West and East of the Niger, signed at Paris, Sept. 8, 1919. (Treaty Series, 1921, No. 6.) (With Map.) 7d.

Papua, Oil in. Papers respecting an arrangement between His Majesty's Government and the Government of the Commonwealth of Australia relating to. (Cmd. 1286.) 2d.

Peace handbooks prepared under direction of Historical Section of Foreign Office:

Vol. XIII, Persian Gulf: French and Portuguese possessions in Asia. (Cloth) 10s. 11d.

Vol. XV, Partition of Africa: British Possessions (1). (Cloth) 13s.

Vol. XVI, British Possessions in Africa. (2) The Congo. 12s. 11½d.

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UNITED STATES²

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China, Incorporation of companies to promote trade in. Report to accompany H. R. 4810. April 22, 1921. 7 p. (H. rp. 13.) *Judiciary Committee*.

Chinese in United States. Registry of certain Chinese refugees. Report to accompany S. J. Res. 33. July 6, 1921. 2 p. (S. rp. 200.) *Immigration Committee*.

Colorado River. Report to accompany S. 1853 to provide for commission between certain States on disposition of waters of Colorado River. June 27, 1921. 1 p. (S. rp. 180.) *Irrigation and Reclamation Committee*.

Crignier, Madame, Relief of. Report in relation to claim presented by Government of France on account of losses sustained by French citizen in connection with search for body of John Paul Jones. July 11, 1921. 13 p. (H. doc. 101.) *State Dept.*

² Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D.C.

Diplomatic Service. Information regarding appointments and promotions in diplomatic service of United States. 1921. 16 p. *State Dept.*

Disarmament. Extract from public. No. 30, 67th Cong., approved July 12, 1921. 1 p.

———. International conference to limit armaments. Report to accompany H. J. Res. 143. June 6, 1921. 1 p. (H. rp. 140.) *Foreign Affairs Committee.*

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———. Comptroller's point of view. Address of June 24, 1921. 14 p. (S. doc. 46.) *Senate.*

Fur seals and sea otters, Laws and regulations for protection of. 1921. 9 p. 4° (Circular 285). *Commerce Dept.*

Germany. Joint resolution terminating state of war between Imperial German Government and United States and between Imperial and Royal Austro-Hungarian Government and United States. (S. J. Res. 16.) Approved July 2, 1921. 2 p. (Public. 8.) Paper, 5c.

———. Report to accompany S. J. Res. 16 repealing declaration of war. April 25, 1921. 2 p. (S. rp. 2 [pt. 1].) *Foreign Relations Committee.*

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———. Letter, in response to resolution, furnishing information as to number of United States troops in Europe, cost of keeping them, and amount of money now owed United States by Germany on their account. July 28, 1921. 1 p. (S. doc. 56.) *War Dept.*

———. List of post-offices of, belonging to other countries by terms of peace treaty. 1921. 12 p. 4°. *Post Office Dept.*

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Immigration laws, rules of May 1, 1917. 5th edition, Dec., 1920. 116 p. Map. (This publication includes act of May 19, 1921, not included in previous issues.) Paper, 10c. *Immigration Bureau.*

Indemnity for damages caused by American forces abroad. Report to accompany S. 1018. April 30, 1921. 1 p. (S. rp. 10.) *Military Affairs Committee.*

International Sanitary Conference. Convention between United States and other Powers, signed Paris, Jan. 17, 1912, proclaimed Dec. 11, 1920. 102 p. (Treaty series 649.) *State Dept.*

Ireland. Struggle of Irish people. Address to Congress of United States adopted at January session of Dail Eireann. 1921. 31 p. (S. doc. 8.)

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Migratory birds treaty act. Extract from charge delivered to grand jury in district court for middle district of Alabama, at Opelika, April 4, 1921. 3 p. (Agricultural Dept. circular 182.) Paper, 5c.

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Naturalization of individuals by special acts of Congress. Hearings on

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Panama. Speech of Henry Cabot Lodge in Senate, Jan. 5, 1904. 1921. 48 p. (S. doc. 37.) *Senate*.

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Trading with the enemy act, as amended. 1921. 28 p. *House of Representatives*.

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———. Power of President to negotiate treaties and methods of rec-

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Venezuela. Informe presentado al consejo central ejecutivo de la Alta Comisión Interamericana sobre la visita que el consultor jurídico del mismo hizo a los Estados Unidos de Venezuela con el objeto de conferenciar sobre los trabajos de la misma alta comisión con el Ministro de Hacienda y la sección Venezolana de este organismo. 1921. 30 p. *Inter-American High Commission*.

———. Treaty for advancement of peace between United States and. Signed March 21, 1914, proclaimed March 21, 1921. 7 p. (Treaty series 652.) *State Dept.*

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

THE HILDING AND OTHER VESSELS (PART CARGOES EX).¹

Judicial Committee of the Privy Council. Dec. 17, 1920.

International Law—Prize—Doctrine of "infection"—Declaration of Paris—Declaration of London—Orders in Council of 1914 and 1916.

By the law of Prize, transfers of the ownership of movables afloat from an enemy transferor to a neutral transferee, when unaccompanied by actual delivery of the goods, are not recognized. Goods which, though not condemnable in themselves, belong, when captured, to the same owner as other cargo in the same vessel liable to condemnation as contraband, are also condemnable as if they too were contraband.

These were four appeals from judgments of Presidents of the Prize Court—one delivered by Sir Samuel Evans and three by Lord Sterndale—relating to the doctrine of "infection."

Lord Sumner, in delivering their Lordships' judgment, said: These appeals are brought to test the validity of the doctrine of "infection" and its applicability to the conditions and forms of overseas commerce at the present time, and their Lordships think it right to deal with them accordingly, although, as will appear, they, or at any rate some of them, might have been disposed of on narrower grounds. They relate to four ships, *The Hilding*, *The Parana*, *The Rena*, and *The Kronprinsessan Margareta*, and to five voyages, there being two of the ship last named.

The claimants are neutrals, who acquired the titles on which they rely in the ordinary way of trade. The goods condemned were coffee and hog products, which are in themselves conditional contraband, and they were carried in neutral bottoms under the protection of neutral flags and were shipped from and deliverable at ports in neutral countries. None of them were shown to have had an ulterior enemy destination, nor was it shown that any of the claimants themselves were privy to the ulterior destination of any of the cargo carried in the same vessels, but in each case there was other cargo, which was in itself conditional contraband and was found to have an ulterior enemy destination, and it is by this that the goods in question have been held to be infected.

The case of *The Hilding* is mainly one of fact, and will be stated later. In the case of *The Parana*, neutral shippers, acting through agents, shipped

sundry parcels of coffee belonging to them, of which one had an ulterior enemy destination, as the President found and as the appellants now accept, and others were consigned to the appellants, Messrs. Lundgren and Rollven, in pursuance of contracts of sale and purchase made before the date of the bills of lading. The terms of the sale were c. and f. Stockholm, reimbursement by confirmed sight credit on a Swedish bank. The draft in respect of one shipment, that made at Santos, was met by the bank in Sweden before seizure; the draft drawn in respect of the other shipment, that made at Rio, was met after seizure. Both dates were long after the ship sailed from Santos and Rio respectively.

In the case of *The Rena*, Diebold and Co., a German firm trading in Brazil, had shipped sundry parcels of coffee, of which one, nominally consigned to Swedish consignees, but claimed on behalf of a Dutch firm, the Commanditaire Vennootschap Heybroek and Co., as purchasers, was held by the President to have belonged to Diebold and Co. at the time of the seizure and to have had an ulterior enemy destination at that time given by Heybroek and Co., and was accordingly condemned. The present appellants, while not admitting these facts, to which indeed they appear not to have been privy, were not in a position to contest the President's findings and condemnation. This may have been their misfortune, but it cannot affect the case. They are a firm of Mattsson Peterzens and Co., consignees named in the bill of lading of another portion of the coffee pursuant to a contract of purchase and sale dated before the shipment, the terms of which were cost and freight Gothenburg, payment at sight on a Swedish bank, who confirmed the credit by telegrams to Santos. The Swedish bank met this draft before the seizure but after the ship had sailed. This parcel of coffee was not shown to have had any ulterior enemy destination; on the contrary, it was admitted to have been in itself the subject of a legitimate transaction.

In the case of the second voyage of *The Kronprinsessan Margareta*, the claimants and appellants are Messrs. Bergman and Bergstrand. Coffee was shipped by Diebold and Co., under a bill of lading dated May 8, 1916, consigned to Messrs. Dahlen and Wahlstedt. This parcel had in fact an ulterior enemy destination and the President condemned it as contraband, but it is contended that it was not liable to condemnation, and therefore not capable of infecting other goods in the same ship, as the Order in Council of October 29, 1914, respecting immunity from condemnation of conditional contraband, consigned to a named consignee at a neutral port of discharge, was still in force and applied to it. There is, therefore, here a question whether this immunity had or had not been revoked before June 15, 1916, the date of seizure. The appellants, Messrs. Bergman and Bergstrand, bought other parcels of coffee from Diebold and Co., under contracts effected before shipment, and were the consignees named in the bill of lading. Their coffee was only destined for Sweden. The terms of

these contracts provided for payment by sight reimbursement credit on a Swedish bank, but the draft was not met until after the date of the seizure.

The remaining case, that of the first voyage of *The Kronprinsessan Margareta*, is rather more complicated. There are four claimants and appellants—Messrs. Engwall, Berg and Hallgren, Levander and Ofverstrom—all neutrals importing for neutral consumption only. An enemy firm, Goldtree, Liebes and Co., in Brazil, made shipments of coffee, of which, in addition to the parcels claimed as above, one was condemned by the President as having an ulterior enemy destination and as being the property of the shippers at the date of seizure. The appellants all bought their parcels under contracts made after shipment, except Levander. The terms of his contract were f. o. b. Acajutla, payment 90 per cent. against bill of lading and balance on delivery, but he, like the other appellants, did not take up the bill of lading and make any payment until after the date of the seizure. In all these cases the appellants were innocent and ignorant of the enemy destination of the infecting parcel.

It will be convenient to consider the nature of the rules impugned and the reasoning and authority on which they rest before dealing with the particular circumstances of the cases under appeal, especially as the application of these rules is complicated by the fact that the purported transfers of ownership have all been effected by transfers of documents representing the goods while afloat and by the fact that, in so far as the position of enemy transferors has to be considered, the appellants further invoke the Declaration of Paris.

For about one hundred and fifty years at least the law of prize has contained two settled rules, one which refuses to recognize transfers of the ownership of movables afloat from an enemy transferor to a neutral transferee, when unaccompanied by actual delivery of the goods, and the other, which condemns, as if contraband, any goods which, though not condemnable in themselves, belong or are deemed to belong when captured to the same owner as other cargo in the same vessel, which itself is liable to condemnation as contraband. It is strictly with owners that these rules deal, and although an owner is normally the person who has and exercises control over goods which belong to him, there is no warrant for saying that either rule refers to anything but ownership. It is not the case that a neutral, who could not otherwise establish such ownership as the law will recognize, is entitled to be treated as if he had done so, because he can show that he has by personal contract acquired a right to control the goods in certain events, nor is it the case that enemy ownership of goods, so associated with contraband as to become liable to confiscation, may be disregarded if the enemy ownership does not happen to be made active by the exercise of actual control, or if the enemy owner's contractual position has made him indifferent to the fate of his goods. Upon the authorities it is also clear that the above-mentioned refusal to recognize

transfers does not apply when both transferor and transferee are neutral, apart from special circumstances affecting them, and that the common ownership, which involves goods, not in themselves contraband, in the condemnation of other goods which are condemned as contraband, is common ownership which subsists at the time of the seizure and has not previously been determined.

Their Lordships are fully aware that some Continental jurists have criticized the rule of infection adversely, and that Continental prize courts have not always accepted it, though it has long been adopted in the United States and more recently in Japan. They are, however, bound by the decisions of their predecessors, which, consistent as they are, it is too late to overrule and impracticable to distinguish. They would observe that, valuable as the opinions of learned and distinguished writers must always be, as aids to a full and exact comprehension of a systematic Law of Nations, prize courts must always attach chief importance to the current of decisions, and the more the field is covered by decided cases the less becomes the authority of commentators and jurists. The history of this rule is obscure. A reference to some of the proclamations in Rymer's "Fœdera" suggests that it may have had its origin in the practice followed by the executive during the 17th century in successive wars, and the theories on which writers like Zouch, Bynkershoek and Heineccius appear to proceed, seem rather to have been an effort to find in their erudition some *ex post facto* warrant for an accepted rule than a historical statement of the reasons which actually guided those who laid it down. Sir William Scott found it well settled, and if he appears to take some credit to the courts for mitigating the harshness of an older time, this points rather to the substitution of legal doctrines for executive practice than to the exercise of any assumed dispensing power by courts of prize.

That the so-called doctrine of infection does not really rest, in spite of many passages which suggest it, on the personal culpability or complicity of the owner of the goods is shown by the fact that, if it were so, excusable ignorance would be an answer, and for this there is no authority. The term is as old as the Treaty of Utrecht, but the doctrine is perhaps unfortunately named. From the figure which describes the goods as contaminated when seized, the mind passes to the analogy of a physical taint, which runs through the entire cargo in consequence of its being in one bottom, and begins on shipment or at least on sailing. Hence, "once infected always infected" is assumed to be the rule, and a buyer would get a tainted parcel, even though he became owner before seizure, and was recognized as such. This is inconsistent with the view that the rule is a penal rule, as it certainly has been said to be, but it is argued that the penal effect is only accidental and that the real foundation is the belligerent's right of capture, which may arise as soon as the ship gets out to sea. Infection has then attached to all the goods afloat in one common owner-

ship, and to purge it by a subsequent transaction and transfer of ownership on land would be to defeat an accrued belligerent right.

This reasoning is answered as soon as it is appreciated that "infection"—that is, the liability of a particular owner to a derivative condemnation of his goods—is not a quality of the goods themselves, but is an incident of the owner's position, when the seizure is made and the captor's right arises. This consideration operates in two ways. It fixes the critical moment as the time of seizure and makes liability to condemnation depend on the facts as they are found to be; but it also establishes that by those facts the claimant must stand or fall. His liability is not in the nature of punishment, nor does it involve *mens rea*. It does not depend on his having formed or having abandoned an intention to send the goods in question to an ulterior enemy destination. The destination of the goods is a matter of fact, by whomsoever it is given, and, when transit to that destination is in progress, this may make the goods themselves absolute contraband. When once it is found that, at the time of the seizure, the same person was owner of goods on board and embarked in the same transaction or transit, of which the ulterior destination involved their condemnation, and of goods bound for a neutral port without any ulterior destination, neither the captor nor the court is called on to investigate his mercantile operations as to these other parcels—an inquiry complex and remote, in which the claimant has all the information and the captor all the disadvantage—but these goods also are involved in the condemnation.

Neutrals, however, must be taken to accept the consequences of the belligerent's legitimate exercise of all his recognized rights. If cargo has in fact such an ulterior destination as makes it liable to condemnation, that consequence follows independently of the actual owner's knowledge, intention, or interest for *res perit domino*. It is accordingly beside the mark to say that the appellants were innocent parties themselves; that they never interposed in the war; that, so far as they knew, all the goods with which they were concerned had a final neutral destination; that if their buyers had arranged otherwise it was unknown to them and unsuspected; that guilty shippers escape because they have been paid, and guilty sub-purchasers because the goods have been intercepted and they are not liable to pay, and that thus the penalty falls for the offence of others on the shoulders of the party who of all is the most innocent.

It has been contended that control and not ownership is the real test, so that either control, divorced from ownership, when vested in a neutral will avert condemnation, or bare ownership in an enemy, if devoid of control, will be so innocuous as to neutralize any infection. It may be doubted if this point really arises. None of the appellants here had control, as distinguished from a contractual right to obtain control on taking up the documents and thereby becoming owner, and, unless in the cases of *The Rena* and *The Parana* the intention was to retain, if anything, only a lien

by way of security and not the general property, none of the transferors were anything less than owners, who had contracted to give control and ownership as well, upon the due taking up of the documents.

In any case, however, there is a fallacy in the argument. In cases like *The Hamborn* (35 *The Times L. R.*, 726; [1919] A. C., 993) control is looked to instead of the mere *persona*, in which, according to municipal law, the ownership resides, because under the rules there applicable enemy character is the question and civil property is not. The rules now applicable adopt the test of ownership and not that of enemy character. They may be criticized or impugned on other grounds, but if they are recognized and the question is merely as to their application, they must be accepted as they stand.

It is objected that the rule "infects" goods which are in themselves free from all objection, by reason of what has been done with other goods over which the claimants had no control, and which in some cases received their enemy destination from consignees whose design was unknown even to the enemy shipper. The rule neither penalizes nor deters the enemy shipper, especially if it is applied in cases where he has been fully paid. It only operates to pass what belongs to an innocent neutral into the pockets of the captors.

Though this kind of deterrent is not always of direct and obvious efficacy, few modes of deterring contraband trade are more effectual than to establish a rule, known by and applicable to all, that the inclusion by a shipper among his other shipments by the same vessel of one parcel having in fact an ulterior enemy destination may lead to the condemnation of the whole. On the other hand, the adoption of the date of the seizure is a great protection to the innocent neutral. Just as the general rule is that a ship is not open to proceedings merely for having carried contraband on a past voyage, so goods are liable to infection not because they formerly belonged to an owner of contraband, but because they are found to do so when the captor's inchoate title by seizure begins. If the common ownership existing before the seizure had then come to an end by means which are valid in prize, this liability does not arise; if it continues till after the seizure, a new and neutral owner, acquiring ownership only after seizure, though nothing forbids his acquiring title from a belligerent, can have no better right as against the legitimate captor than to stand in the shoes of the owner, from whom he derives title, as they were when the goods were seized, and he, by reason of his common ownership of both classes of goods, would have forfeited them all. At the time of the seizure the subsequent transferee has acquired no right to object, and, the goods having been legitimately brought into court for condemnation, a claimant on a title not completed until after seizure must obtain them, if at all, only by the aid of the court and only on the terms of accepting the law there administered as binding upon him.

The rule against recognizing transfers of enemy goods while at sea, if unaccompanied by actual delivery and transfer of possession, is so well established and is now so ancient that its authority cannot be questioned or its utility impugned for the purposes of a judicial determination. Its application assumes that the circumstances of the shipment, and the dealings with the shipping documents and otherwise, are not such as to make the shipment itself an actual delivery of the goods to the transferee through his agent the carrier. It assumes also that a documentary transfer has taken place in good faith by a real and not a sham transaction, and that in pursuance of that transfer rights have been acquired by the transferee which in other courts not bound by such a rule would be valid and enforceable. With sham transactions courts of prize would deal in another fashion; with incomplete transactions insufficient to transfer rights, no court would deal at all. The expression "mere paper transaction," sometimes used, does not imply that something unreal or ineffectual in itself is under discussion. It serves to draw attention to the fact that the transaction is unaccompanied by any dealing with the goods themselves, such as by its overt or notorious character would serve to inform the captor as to the subject which he seizes and the nature of the right, if any, which he may be entitled to acquire in consequence. The history and the theory of the rule, neither of which is now very clear, are too inconclusive to add weight to the rule itself or throw light on its true application. It appears to have been regarded as a particular example of a wider principle, that the national character of movables cannot be changed while they are at sea by any independent dealings or occurrences. Thus, in *The Negotie en Zeevaart* (referred to in 1 C. Rob. at p. 108), decided on appeal in 1782, the question was whether a ship, which went to sea a Dutch ship, had ceased to bear that national character when she was taken, because the Dutch colony of Demerara, from which she sailed, had before her capture become British by capitulation to the British Crown. It was held that she had not. This was followed by *The Dankebaar Africaan* (1 C. Rob., 107), where the question was whether the capitulation of the Cape of Good Hope, which had taken place after the ship sailed but before her capture and had made British subjects of the Dutch owners, had not also entitled them to claim their ship on arrival at the Cape as prize on the ground that there had been in fact a capture of British property. So strict was the rule even then that the claimants, though British subjects themselves at the time of capture, could not be heard to assert that title against the presumptions arising when the ship sailed. Shortly afterwards it was accepted in *The Vrouw Margaretha* (1 C. Rob., 336) that there was no recorded instance of a claim being sustained for goods purchased of an enemy in transit in time of war, for the practice of the prize court to look only to the time of shipment was already invariable.

It has been contended that this is a rule applied for the purpose of

determining the status of goods, and that it is only so applicable; that it decides whether goods have enemy or neutral character, but not whether they, being neutral and in themselves innocent, can be condemned as having been infected by other cargo which is contraband. No authority has been cited for this proposition.

Whether the foundation of the rule be taken to be the tendency of documentary transfers to encourage evasion and fraud, so as to defeat a belligerent's rights in one way, or the tendency of changes of ownership in transit to make the right of seizure at sea precarious, and so to defeat in another way the correlative belligerent right—namely, the right to obtain a condemnation—the reasoning is equally applicable to such cases of exercise of belligerent rights as those now in question. Its application in either case involves the proposition that the goods claimed belong in the eye of the law either to an enemy or to another neutral, and, such prior owner being a person unable to claim the goods owing to their destination or their association according to the established law relating to contraband, the captor's claim to condemnation succeeds.

It was urged that if this rule originated in a question of the national character, under which the ship and goods sailed, it would have no application except to cases where the national character—i.e., enemy character—was the ground upon which condemnation was or could be prayed. There is a confusion here. What can it matter whether the form of the decree is that there is a condemnation because the goods are proved to be enemy property in fact, or because the goods are deemed to be enemy property in law? The condemnation must equally be decreed, and the determination that the goods are enemy property according to the laws of property generally, or according to the particular laws by which in a court of prize the question of enemy property is to be tested, is equally an application of rules of law which bind the court. To proceed a step further, if the determination is that the goods are enemy property, and such as would enjoy the protection of a neutral flag, were it not for the fact that being contraband they lie outside of that protection, the result is the same, namely, that a forfeiture of goods, which the court is bound to regard as being still enemy goods, follows under the circumstances of the case. The rule, stated in 1799, as being a settled rule, is still logically as much part of the process by which the liability of goods shipped by enemy merchants is to be determined as if the case had arisen before 1856, or as if the issue, enemy goods or neutral, arose directly, as it did in *The Odessa* (32 *The Times* L. R., 103; [1916] 1 A. C., 145), and the rule was applicable that ownership and not lien or pledge forms the test which guides the court.

An attempt was made to use this Board's decision in *The Baltica* (11 Moore, P. C. 141) by which their Lordships are bound, as a further ground for excluding the application to these cases of any rule which denies recognition to titles obtained through a documentary transfer made while the

goods are at sea. It is true that in that case Mr. Pemberton Leigh, delivering the judgment of the Board, states that there are two possible foundations for the rule—the one that documentary transfers lend themselves to fraud and concealment, and the other that they tend to defeat the belligerent's right of seizure—and then describes the former as the "true" view. It was not, however, any part of the question then to be decided to settle the foundation of the rule, since its mere existence sufficed for the determination of the case, and in the circumstances of that case and the contemporaneous case of *The Ariel* (11 Moore, P. C. 119), the danger of collusive transfers was the one which was most clearly to be apprehended. Their Lordships do not regard this judgment as declaring the view that these transfers tend to defeat a belligerent's rights to be a false view. Indeed, it is plain that in *The Daksa* (33 *The Times* L. R., 281; [1917] A. C., 386) this Board was of a contrary opinion. The two views are not really inconsistent. A collusive transfer, the truth of which the court has no means of penetrating, does defeat the belligerent's rights. On the other hand, the transaction may be genuine, as in *The Baltica* (*supra*) it was, yet not be recognized. It cannot be doubted that the reason was not that the court was afraid of being deceived or felt itself incapable of ascertaining the truth, but because, if it were deceived or left in doubt, it would be unable to do justice to the belligerent captor's claim. It is, therefore, no answer to say that there was no collusion about the present transfers. They fall within a rule which recognizes no personal or particular exceptions, and if the goods were liable to be forfeited, assuming them to be rightly stamped with enemy character when seized, an admission of a documentary transfer to a neutral would defeat the captor's rights.

As these rules are undoubtedly well established, the appellants have been principally constrained to impugn their application to the facts of the present appeals. The circumstance that they do not appear to have been applied together in the same case before is merely accidental, and if the result seems to wear an artificial appearance that is an accident also. The same may be said of the observation that in the old cases the infecting parcel has been shipped direct to the enemy by the common owner himself, and that infection in consequence of an ulterior enemy destination is new. This is merely a consequence of the development of the doctrine of continuous voyage.

Two further arguments are chiefly relied on. The first, that the rule as to infection has been virtually abrogated by the Declaration of Paris; the second, that the rule as to transfers of goods while at sea and without delivery is inconsistent with modern mercantile practice, and therefore ought no longer to be followed. Their Lordships will, of course, pay every possible regard to such an instrument as the Declaration of Paris, but it is necessary to point out exactly what, in this connection, its provisions were. A neutral flag protects enemy goods from capture as enemy goods; in a

neutral bottom enemy goods are placed on the same footing as neutral goods. The declaration, however, is not a charter of immunity in all circumstances for enemy goods under a neutral flag, nor does it protect goods simply as being enemy goods, which, if neutral, would have been liable to condemnation. The declaration says nothing about the criteria by which the enemy or neutral character of goods is to be determined; it says nothing about the doctrine of "infection"; it says nothing about admissibility or rules of evidence; it says nothing of the rights of a belligerent to repress traffic in contraband of war, or of the modes by which courts of prize give effect to and protect those rights. It is said that the grounds on which so-called "paper transfers" of property at sea are disregarded have no application in the present case, for the goods, even in the cases where they were enemy property when shipped, were covered by the neutral flag and not even potentially capable of being made good prize, and have since been transferred in good faith and in the ordinary way of trade. The answer is simple. They were capable of being made good prize, even though they were enemy goods in a neutral bottom, for if they were contraband, or were "infected" by contraband, being in a common ownership with contraband when seized, nothing in the Declaration of Paris either expressly or impliedly protected them.

It is then said that, if so, "infection" has no application, for this principle is a punitive principle and, as a neutral is entitled to trade in contraband at his peril, there is nothing for which to punish. He has not intervened in the war or sided with one party against the other, and he has carried on his own neutral trade in his own and a legitimate way. He is really being penalized in an abortive attempt to punish an enemy, who escapes the penalty. Accordingly, the maxim *cessante ratione legis cessat ipsa lex* applies equally as in the case of the doctrine discussed above. If the rule against recognition of transfers of goods at sea ceases to apply, because these goods cannot be good prize even if enemy owned so that the reason of the rule is gone, equally, when the goods are proved to be neutral property, the doctrine of infection ceases to apply, for that was laid down in order to punish, and this trade is now admitted to be innocent though hazardous. Again the answer is simple.

Penalty and punishment in this connection are in a further respect unsuitable terms, namely, that they might seem to question a neutral's right to ship or to buy contraband at his peril. Neither belligerents nor courts of prize exercise a general correctional jurisdiction over the high seas. The ownership of contraband goods, though often spoken of as if it were a guilty departure from the neutral duty of impartiality, is now well recognized as being in itself no transgression of the limits of a neutral's duty, but merely the exercise of a hazardous right, in the course of which he may come into conflict with the rights of the belligerent and be worsted.

The language about "innocent" and "guilty" goods, about the

"offence" of carrying contraband and about taking contraband goods "*in delicto*" and imposing a "penalty" accordingly, was effective and apt in the connection in which it was used, but that connection involved a decision, not as to the rationale of the doctrine of infection, but only as to its application in particular cases. The decisions do not preclude their Lordships from recognizing that it is not the function of courts of prize to be censors of trade generally during war; that, if neutrals have the right to carry contraband, belligerents have the correlative and predominant right to prevent it; and that the doctrine of infection was established and still stands as an effectual deterrent, the need and justification for which have by no means passed away.

As to the changes in mercantile practice, it has already been indicated in *The Odessa* (*supra*) (pp. 160-161) that trade machinery, which is the growth and creation of years of peace, cannot supersede the settled law of prize. In time of war the remedy is for neutrals to change their practice and buy before shipment, and, if they pay after shipment and before they get the goods, they must take their risk of infection. In the long intervals of peace between war and war, commerce flourishes and commercial practices and modes of business change and develop while the law of prize is in abeyance, but merchants have no power to alter or affect this law, nor have prize courts any discretion or authority to abrogate settled and binding rules on the ground that their application is inconvenient to or inconsistent with the smooth and regular working of modern commerce. Nor is it the case that, when the rules now under discussion first grew up, either the use of documents as symbols of goods afloat in connection with passing the property or the practice of loading general ships with an aggregate of parcels, intended to be distributed among sundry consignees, was unfamiliar or unknown. In any case, and although prize courts will always be mindful of the just rights of neutrals, it is certain that none would be greater sufferers than neutral merchants if it were once admitted that in prize courts fixed principles could be disregarded and settled law could be set aside in hard cases, for cases may be hard to belligerents as well as to neutrals. The President, Lord Sterndale, made some observations in his judgment in the case of *The Rena* which show how much he was impressed with the argument that a combination of these two rules, leading to the consequence of condemnation in the present cases, is harsh and impolitic, but it is plain that if mere considerations of particular hardship prevailed to alter the application of the law, the whole uniformity of the system administered by prize courts would be impaired. It is plain also that, if a claimant's ignorance could be relied on as an answer to the captor's rights, nothing would be easier than to defeat those rights in almost every case. Strictly speaking, a neutral is not in a position to complain of being penalized by the doctrine of infection, when his transferor and the common owner of his parcel and of the

contraband parcel is an enemy, for, if the court cannot recognize his title, he fails because he is not the owner, not because he is subject to a general doctrine of infection. It is otherwise when he takes from a neutral, but here again, if he is not owner at the time of seizure, he fails because he has no right to complain of the seizure or to defeat the rights which the captors derive from it, and if, nevertheless, he has paid his money, he loses it because, before doing so, he failed to ascertain the facts as to the goods and to make sure that the documents taken up would avail him to obtain delivery.

The result of these considerations is that, subject to the exceptional points which follow, the appellants were rightly held to be affected by the doctrine impugned and their claims were properly dismissed. It remains to consider three special cases, in two of which it is contended that the appellants became owners before the commencement of the voyage, whilst in the third reliance is placed on the terms of the Declaration of London Order in Council, dated October 29, 1914. It is convenient to take this last case first.

In the case of *The Kronprinsessan Margareta's* second voyage, two firms, Dahlen and Wahlstedt and Bergman and Bergstrand, each claim portions of her cargo. Dahlen and Wahlstedt admitted that their parcel had an ulterior enemy destination, but claimed that the Order in Council of October 29, 1914, applied to it, and, in accordance with the language of Article 35 of the Declaration of London, waived the Crown's right to ask for its condemnation. The question is whether that Order in Council, so far as it would affect this parcel, had been revoked prior to the seizure on June 15, 1916—that is to say, by the Order in Council of March 30, 1916—and this is a question of construction.

In general, when the Crown exercises such power as it has to affect the rights of neutrals by Order in Council the terms of that order, to be effectual, must be unambiguous and clear. In *The Kronprinsessin Victoria* (35 *The Times* L. R., 74; [1919] A. C., 261) their Lordships have so held. In the present case the neutral rights affected are such as subsist by virtue of a prior Order in Council intimating an intention to waive a portion of the full belligerent rights of the Crown for the time being, but this circumstance does not affect the construction of the order under discussion. The Declaration of London Order No. 2 had announced that the Crown would observe certain articles of the Declaration of London, of which that now material was Article 35. No doubt that was a concession to neutral interests, and Dahlen and Wahlstedt's transaction would fall within the terms of the article.

The Order in Council of March 30, 1916, after reciting that doubts have arisen as to the Declaration of London Order No. 2, says in Article 1, "The provisions of the Declaration of London Order in Council No. 2, 1914, shall not be deemed to limit nor to have limited in any way the

right of his Majesty to capture goods on the ground that they are conditional contraband, nor to affect or to have affected the liability of conditional contraband" to be captured in circumstances such as those of the present case; in other words, that for the future his Majesty no longer assents to any limitation on his full belligerent rights in the matter in question, the terms of the Declaration of London Order No. 2 notwithstanding. In what respect are these words wanting in clearness and how do they fall short of an unambiguous withdrawal of any prior waiver of the Crown rights as affecting certain neutral shipments? They are more than a mere warning that the Crown can, by revocation of prior waivers, return to the exercise of its full belligerent rights unimpaired, nor was there any occasion for such a declaration.

Attention is first drawn to the words "shall not be deemed . . . to have limited" those rights. As these words refer to the past and to the consequences of transactions which have already occurred, they are clearly severable from the other words of the sentence which refer to the future. Even if they are ineffectual, for an Order in Council cannot give to a prior order any other validity or effect than that which its terms, truly construed, possessed according to law, they do not diminish the full effect of the other words as to matters within the undoubted competence of his Majesty in Council, nor do they cloud or obscure their meaning. Their Lordships think it needless and inexpedient to surmise with what object these words relating to past occurrences were inserted. The formula, now so common, which declares something to be deemed to have been what it really was not, is sometimes no doubt convenient, but the limits of its utility are soon reached and they may have been exceeded here. This their Lordships have not to consider. It is enough that the obscurity of the words in the past tense, such as it is, does not touch those in the future.

The next point is that the order of March 30, 1916, itself in Article 2 virtually makes a reference to Article 35 of the Declaration of London as modified by Article 1 (iii) of the order of October 29, 1914, which is only consistent with the continuance of that article in force, and by Article 5 expressly revokes any recognition of Article 19 of the Declaration of London, thereby showing that the intention is to name articles no longer recognized and not further or otherwise to withdraw the Declaration of London Order No. 2. Their Lordships can only observe that, the question being one of clearness or ambiguity, the clearness is on the side of Article 1 of the order of March 30, 1916, and that Article 2 is not clear enough to preserve what the words used *de futuro* in Article 1 have clearly renounced. The effect of Article 2 is not a point that they need further pursue. As to Article 5 there may be more ways than one of being clear, but the use of general terms in Article 1 is not ambiguous merely because the use of particular terms is adopted in Article 5, nor does the first ex-

pression fail to be clear merely because, following the model of the second, it might have been clearer.

The last contention is that the express revocation of the Declaration of London No. 2 Order in terms and *in toto* by the Maritime Rights Order in Council of July 7, 1916, is in itself a ground for construing the order of March 30, 1916, wherever possible, as being something less than a revocation, and it is said that the order of July, 1916, recognizes that some part of the order of October, 1914, then still subsisted. In *The Kronprinzessin Victoria* (*supra*) their Lordships observed that its whole tenor, the recitals, the repeal and the re-enactment are consistent only with the view that the order of October 29, 1914, had up to that date remained in full force and unaffected, and such was doubtless the view which those who framed that order in fact entertained. In the case of an Order in Council, however, the same weight does not attach to the view of the existing law adopted by its authors as attaches to the language of the Legislature when amending existing law, and in that case their Lordships had not to consider the order of March 30, 1916, at all, and decided nothing about it. Doubts had arisen and continued to arise as to the effect of these Orders in Council and it might well be thought right *ex abundanti cautela* to declare in July, 1916, finally and in the most general terms the revocation of an order, which had already been cancelled, not indeed in such downright language yet with sufficient clearness.

Accordingly the claim of Dahlen and Wahlstedt fails and it is admitted that the claim of Bergman and Bergstrand is covered by the same considerations, for the shipper of the two parcels was the same person and an enemy; and no title having been acquired by Bergman and Bergstrand before the commencement of the voyage (subject to what is hereafter said upon the effect of a confirmed credit on the transaction), the enemy destination, which made Dahlen and Wahlstedt's parcel of conditional contraband liable to be condemned, would also infect the parcel claimed by Bergman and Bergstrand and warrant its condemnation also as the property in it was, at the time of seizure, in the same owner as the property in the contraband parcel.

The peculiar conditions produced by the war have led to two new features in transatlantic commerce, not necessarily connected but, as it happens, both present in these appeals. One is that all the insurances are effected in Europe by the consignees; the other that the consignor stipulates for a confirmed bank credit, against which he draws. The first appears to have been due to the difficulty of covering the war risks in America; the second doubtless arose from the fact that commerce has been carried on in new channels and not always with persons of unimpeachable personal repute, and it had the additional advantage of minimizing the inconvenience to the seller of sharp fluctuations in the rates of exchange. The question now raised is whether, in circumstances which include especially

these two practices, an intention can be inferred to pass the property in cargo before the voyage commences, independently alike of payment for the property or delivery of documents. If it can, the neutral buyer, becoming owner from the neutral seller and shipper before the beginning of the transit, to which the doctrine of infection applies, escapes from the risk of it. Further, in the two cases when the sellers and shippers were the enemy firm of Diebold and Co., the transaction of purchase would be complete before the point of time at which the rule against documentary transfer of goods afloat begins to apply. These points arise in the cases of *The Parana*, *The Rena*, and *The Kronprinsessan Margareta*, on her later voyage, but, as the facts are similar in all three, the argument was presented mainly on those of *The Parana*.

In the case of *The Parana* the terms stipulated on behalf of Urban and Co., the neutral sellers and shippers, were "cost and freight Gothenburg . . . reimbursement A/S on Malareprovinsernas Bank, Stockholm." The buyers applied to this bank to open a credit available to the sellers and to confirm to the latter the fact of their having done so, and they deposited a sum of money to make the credit effective. The bank did cable confirmation of this credit in the following terms, "Confirmed credit opened Kroners 100,000 account Lundgren Rollven against 2,000 bags coffee shipment Parana." The shippers thereupon took bills of lading making the coffee deliverable to the consignees' order and sent them with an invoice and a sight draft for its amount, through collecting agents of their own, to be presented together to the bank in Sweden. The appellants contend that the effect of this transaction was that the property in the coffee passed from the sellers to the consignees before the commencement of the voyage, and that infection has accordingly no application to their case.

The passing of property being a question of intention is ultimately a question of fact. There is no evidence of the intention of these parties beyond the inferences to be drawn from their situation and interests and from the mercantile operations which they conducted. What law they supposed would govern their transaction is not shown, nor is any evidence given of the provisions of any foreign law and, for the reasons given in *The Parchim* (34 *The Times* L. R., 53; [1918] A. C., 157), the law to be applied must in these circumstances be that of England so far as the matter is one of law at all. That law has attached definite presumptions as to intention to definite courses of procedure and modes of expressing and dealing with common mercantile instruments.

If the shippers had insured the goods and had attached the policy to the draft, and if they had taken the bills of lading to their own order, no question could have arisen. Again, if in pursuance of the contract the consignees had insured for the benefit, as between buyer and seller, of whom it might concern, there would have been little doubt possible. Their Lordships will assume, because the argument appeared to assume on all

hands, that the insurance effected in Europe was for the consignees' benefit only, though they are by no means satisfied that it was so, and that none was effected by or for the consignor. The importance which always attaches to the incidence of insurance in international commerce makes this a significant point.

Again, importance attaches to the fact that the shippers, having loaded the coffee on a general ship—a bailment to the carrier—took the bills of lading to the consignees' order. Without the consignees' indorsement they could not thereafter demand delivery ex ship as a matter of course, though without delivery of the bills of lading to the consignees they in their turn would not obtain delivery in the ordinary way of business. The 2,000 bags bought by Lundgren and Rollven appear to have been part of a total quantity of 4,000 bags shipped by Urban and Co. (see *Parana Record*, pp. 35, 42, and 45). These bags were lettered and numbered in different ways, probably according to the place of origin and quality of the coffee, and, unless the other 2,000 bags of similar coffee were nevertheless numbered and marked in a wholly dissimilar way of which there is no evidence, it would seem from the specification sent forward that specific bags were not appropriated to the contract of Lundgren and Rollven. Their contract was to be satisfied out of the bulk on discharge, and until some bags were then appropriated to the holders of their bills of lading, it could not be predicated of any particular bag that it was one of those deliverable to the order of Lundgren and Rollven. In the case of *The Rena* and *The Kronprinsessan Margareta*, however, it does not appear that there was any other cargo on board shipped by the same firm and forming a bulk of which the parcels in question were only an undivided part.

There seems no doubt that business of this kind was such as the Malareprovinsernas Bank was always ready to do for a respectable customer, whose credit was good or who put it in funds for the purpose. The customer applying formally to the bank for the credit was in each case the buyer. There are some expressions in the letters of the sellers' agents in the case of *The Parana* which suggest that they had made some arrangements on the sellers' behalf with this bank prior to the completion of the agreement of sale, so as to ensure an available credit ready to be operated upon, but no such arrangement is forthcoming or is proved, nor is there any suggestion of it in the other cases, and it does not appear that anything more passed between the bank and the consignors than a cabled statement to the effect that "as requested we inform you that Lundgren and Rollven have opened a credit with us, out of which a draft with bills of lading can be met." Their Lordships are unable to infer that, by English law at any rate, any enforceable obligation arose between the consignors and this bank. There was no contract of guarantee. The Santos cargo certainly, and the Rio cargo in all probability also, was shipped before the credit was confirmed, for in the latter case the bill of lading and the confirmation of the

credit are on the same day. No letter of credit was issued; no case of estoppel has been made, and indeed the facts stated by the bank were true; no request for shipment or consignment to the appellants was made by the bank; no promise to meet the draft as an obligation *de futuro* arose on any consideration moving from the consignors to the bank. Their Lordships do not doubt that in the ordinary course this bank—an institution against which nothing has been said or suggested—would scrupulously apply Messrs. Lundgren and Rollven's funds in their hands to meeting the consignors' draft, duly presented. Whether the bank could have resisted, if their customers had claimed to withdraw their funds before presentation of any draft, does not appear, but there is no need to suppose on either side any possibility of such a course being attempted. In the case of *The Kronprinsessan Margareta* the form of application to the bank provided for the irrevocability of the credit up to a certain time, and for this a blank was left, but it is noticeable that Messrs. Bergman and Bergstrand did not fill up the blank. It is enough to say that no obligation by the bank to meet the draft, which the drawers of it could have enforced, is shown to have arisen. Not merely was there no payment of the consignors on shipment of the goods, there was not even material for a novation. In spite of the confirmation of the credit they were and remained unpaid vendors till a much later date.

Now two things are quite plain. The consignors did not propose at any time to rely for payment on the mere personal credit of the consignees, and they carefully kept the bills of lading in their own agents' hands until the draft was met (see *Moakes v. Nicholson*, 19 C. B. N. S., 290). But for the absence of a policy of insurance they strictly pursued the same course of dealing with the documents as if there had been a c. f. and i. sale.

In these circumstances what can be inferred as to the passing of the general property? What is there to show an intention to pass that property for anything less than payment, and what motive is there for such an intention? The appellants, Messrs. Lundgren and Rollven, have to show that it passed to them and passed, too, before the beginning of the voyage. If it did, then the consignors no longer owned the goods and had nothing to show against them except a draft of their own, which could not be enforced, and a bill of lading which would not entitle them to delivery of the goods, though its retention might seriously inconvenience the new owners, the consignees. Rights to stop *in transitu* or to exercise an unpaid vendors' lien need hardly be discussed, for, on a question of intention in fact, as to which there is a good deal of evidence, it would be artificial to assume that the consignors' minds were actually determined to the contrary by consideration of legal remedies, of which it is not shown that they had any knowledge, let the legal presumption be what it will. It is said that, as a matter of business, the confirmed credit relieved the consignors of all further concern in the goods, for they could have no doubt that they

would be paid by the bank in any event and that the failure to insure is proof positive of this. It may be so, though their Lordships do not desire to express any opinion as to the rights of the parties if the coffee were known to be already lost at the time of the presentation of the draft, but it seems clear that the consignors desired to retain an interest in the goods, otherwise why should they retain the bills of lading in their agents' hands? It is said that this only points to an intention to reserve a special property as security, but the omission to insure would be equally significant in this case, and there is no reason why, as a matter of actual intent, a special and not the general property should have been reserved. The case might be very different if the bills of lading had been forwarded to Lundgren and Rollven direct (*Ex parte Banner*, 2 Ch. D., 278). As it is, *Shepherd v. Harrison* (L. R., 5 H. L., 116) would surely apply, if on presentation of the bills of lading with the draft there had been a retention of the first without payment of the second. There may be explanations of the shipper's election to be his own insurer of the coffee till the sight draft should be met, but, however this may be, there is nothing to outweigh the significance of a dealing with the documents so nearly identical with that in an ordinary transaction *c. f.* and *i.*

No authority was forthcoming, which proved to be completely in point. Cases, in which it has been held that taking the bill of lading in the shipper's own name negatives any unconditional appropriation to the buyer by the delivery of the goods on shipboard and indicates one conditional on the documents being taken up, can throw only an indirect light on the question here involved. Certainly no case was found in which it was held that taking the bill of lading in the buyer's name, while withholding delivery of it until presentation and taking up of the documents, would not be, as an appropriation, equally conditional. Much reliance was placed on *The Parchim* (*supra*), a case not only decided on very special facts, but on facts so different from those arising in the present appeal as not in any way to rule it. That case did not in any degree substitute the incidence of the risk for the passing of the general property as the test to be applied. There the sellers of the entire cargo of a named ship took the bills of lading to their own order, but it was held that the presumption of an intention to retain the property till something was done by the buyer after shipment was rebutted by the special circumstances of the case. The contract was unusual. It was on cost and freight terms, but was by no means similar to that now under discussion. With the exception of the form of the bills of lading, which itself was determined by the sellers' agent without either particular instructions or actual knowledge of the terms of the contract, everything pointed to the intention that the property should pass to the buyer on shipment, though he was only to have possession of the cargo, and the bills of lading representing it, on subsequently paying the price. Special significance was attached to the fact

that, on shipment, or at least on notification of it, the cargo was to be at the buyer's risk and he had to pay, lost or not lost. Meantime the documents were held by a bank *in media*, neither to be transferred to the buyers without payment, nor to be placed at the sellers' disposal, unless and until the buyers failed to take them up. Incidentally it may be observed that, although the loading was only completed after the outbreak of war, the interval was short, the shipment was made in pursuance of a contract entered into before the war, and no point was taken on behalf of the captors, even if any arose, as to the passing of property afloat during war from an enemy seller to a neutral buyer by delivery of documents. The case does not purport to lay down any general rule that a particular mode of dealing with a bill of lading must, whenever it occurs and in whatever circumstances, always prove a particular intention. It is not an authority for the contention that if the bill of lading is taken in the buyer's name this necessarily proves that the goods shipped are appropriated to the contract and delivered to the captain as the buyer's bailee, with a consequent inference of the passing of the property to the buyer on shipment.

In the present case it appears to their Lordships that the retention by the seller of the bill of lading was inconsistent with an intention to pass the property. They think that it was "clearly intended by the consignor to preserve his title to the goods until he did a further act by transferring the bill of lading." The special circumstance of the existence of a confirmed banker's credit in this case is only indirectly relevant. It no doubt enhances the likelihood that the bills of lading will eventually be taken up and the goods be paid for, and so diminishes the importance to the seller of being still able to say that the goods are his, but it is not direct evidence of intention; it is only a reason why a particular intention is more likely to have been formed in such a case than in others. The intention has still to be inferred, principally from what was done and from the communications made with reference to it, and these point to an intention not to pass the property till the drafts were paid, and it is really rather a reason for intending to get the documents presented and taken up as soon as possible than for an intention not to retain the ownership even until that could be effected. If the seller was paid or was holder of an enforceable contract from a bank for payment, the sooner he passed the property the better, for he was uninsured, but if he was neither he gained nothing by passing the property away. It was not onerous property.

In one respect the appeal succeeds. Of the two shipments by *The Parana*, the draft for the 1,000 bags shipped at Santos was met by the Swedish bank a fortnight before the ship was seized. Thereupon the appellants Lundgren and Rollven became the owners, and there was not any common ownership of this parcel with an infecting parcel at the time of the seizure to justify the condemnation of these 1,000 bags. The decree

appealed against in this case will, therefore, be varied by ordering the release of this parcel, but, as this success is very partial, their Lordships think that it should not affect the costs. As to the other parcel, Lundgren and Rollven fail because the goods at the date of seizure were in the same ownership, namely, that of Urban and Co., as the contraband parcel intended for Hyllen and Kock, which was condemned, and are infected, the Declaration of Paris notwithstanding. Mattsson, Peterzens and Co., fail for the same reasons. They too acquired title only after seizure and, at the time of the seizure, the goods were liable to condemnation. Bergman and Bergstrand fail because Dahlen and Wahlstedt's parcel, not being protected by the Order in Council, infected the rest of Diebold's coffee, and they cannot claim recognition of an ownership which was not acquired by payment till after seizure, and then was only effected by documentary transfer of goods afloat. The claims of Engwall, Berg and Hallgren, Levander and Ofverstrom must be dismissed, for their ownership only arises by documentary transfer of the goods while afloat, which was only affected after seizure, and the goods, when seized, belonged to the owners of a parcel of conditional contraband in the same ship, which had an ulterior enemy destination.

The appeal in the case of *The Hilding* may be dealt with shortly. It relates to 200 cases of fatbacks and 100 of clear bellies in their nature conditional contraband, and covered by bills of lading making them deliverable to Paulsen and Co., as consignees. The 200 cases of fatbacks were the balance of a larger parcel, some of which Paulsen and Co. had appropriated to Weimann and Co., and some to Henrik Lucas as sub-purchasers under contracts previously made. That the goods had an ulterior enemy destination was not disputed before their Lordships, but they were shipped by neutrals on a neutral ship plying between neutral ports and were seized while the Declaration of London Order No. 2 of October 29, 1914, was in force. The appellants, Paulsen and Co., claimed to have bought and paid for the goods and to have become invested with the property in them before seizure. There were on board *The Hilding* also the other cases which E. L. Weimann and Co. and Henrik Lucas purported to have purchased from Paulsen and Co., and the claims to these were put in by Weimann and Co., and Lucas and not by Messrs. Paulsen. To these no claimant appeared at the hearing, and the President, Sir Samuel Evans, being satisfied that they had an ulterior enemy destination, condemned them. He further held that at the time of seizure the property in this parcel had not passed out of Paulsen and Co., and concluded that its condemnation in any case involved the condemnation on the ground of infection, of the parcel of goods now claimed by Paulsen and Co., even assuming that they had proved the ownership to be in themselves. The President further, though his exact finding is somewhat uncertain, does not appear to have been satisfied that Paulsen and Co. ever acquired the property in any of the goods above mentioned.

It is impossible for their Lordships to review the decision of the President that the goods claimed in the name of Weimann and Co. and of their sub-purchasers were to be condemned. The statistical case made by the Crown was sufficient, unless answered, to prove the destination in Hamburg, and no one appeared to answer it in support of the claim. Paulsen and Co. found it necessary to elect whether they should say that as to this parcel they were owners no longer, or that they were owners still. They chose the former course and made no claim; they cannot now be heard to make the claim which they would have made before the President if they had chosen the latter.

Again, in proving their case before him they set up that they had sold to Weimann and Co. and had been paid before seizure, but before the prize court they never gave the date of the payment, which in the usual mercantile course, applicable to this transaction, was the crucial matter. Their Lordships could not allow them to mend their hand and endeavor to supply this deficiency on the appeal. Nor are the inferences satisfactory which were drawn from certain intercepted messages, referring to some customer as having "taken up" some "documents," that remained unidentified. They find it impossible, therefore, to say that the President was wrong in finding that the ownership in the Weimann parcel had not passed from Paulsen and Co. before seizure.

Paulsen and Co. were in fact the persons to whom the goods were consigned in name and in the bill of lading. Were they, however, consignees having actual control, or were they merely intermediaries introduced as the creatures of others? The President does not expressly find either, but it is clear that he found the entire position of Paulsen and Co. to be ambiguous and unsatisfactory. On consideration of the evidence their Lordships also are not satisfied that Paulsen and Co. really controlled either the goods or their destination. The burden of proof was on them and it is only by inference that the President's judgment is suggested to find anything in their favor. It never does so in terms; it expresses doubt as to the passing of the property from Crossman and Sieleken, the shippers, at all. There is ground for thinking that not Paulsen and Co., but some other party provided the funds required and that they were only intermediaries acting as they might be directed. It cannot be said that they have discharged the burden of proof in fact, and accordingly there is no sufficient ground for arriving on appeal at a finding of fact in their favor at which the late President could not bring himself to arrive.

This makes it unnecessary to decide the point which was raised, that the naming of the consignee in the bill of lading, to which the Order in Council of October 29, 1914, refers, only avails to protect contraband goods from condemnation as contraband and cannot be extended to the further waiver by the Crown of its right to claim the condemnation on the ground of infection by goods in the same bottom and in the same ownership with

BOOK REVIEWS *

The Law of the Sea: A Manual of the Principles of Admiralty Law for Students, Mariners, and Ship Operators. By George L. Canfield and George W. Dalzell, with a Summary of the Navigation Laws of the United States by Jasper Y. Brinton. New York: D. Appleton & Co. 1921. pp. xvi, 315.

The publication of this manual is another indication of the revival of interest in maritime affairs which is now so conspicuous in the United States. It is the third number in a series in which volumes on Ocean Steamship Traffic Management and Marine Insurance have already appeared and in which other topics will be treated in later volumes. The scope and limitations of the present manual are thus indicated by the editors: "It is a manual for the student, the owner or the master of a vessel who may desire to acquire information concerning the main facts and principles of maritime law without attempting to acquire such a mastery of the subject as is possessed by an admiralty lawyer." Therefore, while the book deals with law and is written by lawyers, it should not be judged by the standards appropriate to a law book.

The authors have achieved their purpose. In little more than two hundred pages they have given a clear and concise statement of the chief principles of admiralty law as developed by the courts and as found in the statutes. The book is divided into seventeen chapters under such significant titles as Title and Transfer, Owners and Managers, The Master, Seamen, Contracts of Affreightment, Bills of Lading and Charter Parties, Maritime Liens, Collision, Towage and Pilotage, Salvage and General Average, Wrecks and Derelicts, Wharfage and Moorage, and Admiralty Remedies. To a surprising degree in so small a book, the authors have been able to state the facts and to quote from the opinion in many important cases and have thus made more clear the reason for the rules which have been developed. At the end of each chapter is given a list of references to treatises and decisions which may be made the basis for further study.

It would be captious to point out slips in statements of facts, such as the statement that there are several district courts in each State, or errors or lack of clearness which may be attributed to necessary brevity. But it is perhaps not captious to point out that the authors hold the view so widely prevalent that admiralty law is a part of international law. Even

* The JOURNAL assumes no responsibility for the views expressed in signed book reviews.—ED.

though supported by the authority of the United States Supreme Court, the present writer is convinced that this view is erroneous. However much the definitions of international law may vary, they agree in one thing—that it has to do with the relations of nations. But if a British vessel collides on the high seas with a French vessel, and the offender upon arrival in an American port is libeled and redress is given by an American court, no government and no international relation is involved. The wrong suffered is a private wrong and the remedy sought is a private remedy. The law by which the rights of the parties will be judged is the law of the sea—the common law of nations, but not international law.

The authors offer some thoughtful comment upon the need for reform in admiralty law. They point out the chaotic condition of the law, due first to conflicting legislation, and secondly to the lack of judges in the admiralty courts who have been trained in admiralty law. In so far as the chaos is due to legislation, it is in process of being removed through the codification of the navigation laws which the United States Shipping Board, acting under special authority of Congress, is now carrying forward. In so far as it depends upon the courts, a remedy is more difficult. When a committee of lawyers from an important Atlantic seaport once waited upon the then President of the United States to ask that a vacancy in the District Court might be filled by the appointment of a man trained in admiralty, the President, himself an eminent lawyer, informed them, "Quite unnecessary. Any lawyer can learn admiralty law in two weeks." Perhaps the revival of interest in maritime affairs will lead to a demand that the judges who are to deal with the litigation arising from them shall have had some training in the law which they are to apply.

Appendices contain a form of protest, the text of the Merchant Marine Act of 1920 and a Summary of the Navigation Laws of the United States prepared by Jasper Y. Brinton of the Philadelphia Bar. This summary is one of the most helpful features of the book. In a space of about forty pages Mr. Brinton has made a clear and concise résumé of the mass of statutes dealing with navigation. Only one who has himself had occasion to analyze and classify this material can fully appreciate the merit of his achievement.

LAWRENCE B. EVANS.

Le Controle Parlementaire de la Politique Étrangère en Angleterre, en France, et aux États-Unis. By S. R. Chow. Paris: Ernest Sagot & Cie. 1920. pp. 326.

With the World War came an insistent demand for democratic control of foreign affairs. It was expressed in programmes for world-reorganization, agitated in public meetings, and urged in pamphlet literature. Governments were blamed for the catastrophe and there was a feeling that if

wars were to be prevented in future the people of the countries involved should have a larger share than they had in former days in shaping foreign policy. But opinions differed as to whether popular control should be exercised by a referendum to the voters or by the extension of the powers of the legislative at the expense of the executive branch of government, a check upon which was believed to be necessary.

Dr. S. R. Chow in his timely book on this subject has not undertaken to go into the question of a popular referendum, except incidentally, but has confined his investigation chiefly to the parliamentary control of foreign policies, the only direction in which advance is practical at the present time. Although in gathering his information he uses secondary sources chiefly, he has assembled important facts or quoted suggestive comments from recognized authorities on the science of government, constitutional law or international relations. Instead of preparing a formal thesis from original documents and producing a dry piece of reading, he has written an entertaining political essay and brought his subject within the understanding of the average mature reader. His method is first to analyze and then to compare the political systems of Great Britain, France and the United States to show the relative measure of control exercised by the executive and legislative branches of government, together with the reaction on them of public opinion in deciding questions of foreign policy. His third classification, which he calls political control, is more or less identified with legislative control and probably ought not to have separate treatment.

After dwelling in detail on the characteristics of these systems, Dr. Chow summarizes his findings in a special chapter. He endeavors to show that under the French system there are three kinds of control over foreign policy—legislative, constitutional and political; that under the British system there is political and legislative control, but a lack of constitutional control; and that in the American system, although there is legislative and especially constitutional control, political control does not exist. In all three systems, however, there is legislative control. In France, as in Great Britain, the executive department of government has large discretionary powers, yet the legislative branch can in a measure influence foreign policy when voting necessary credit, as for example, in support of a declaration of war, the establishment of a legation, or the execution of a treaty. In the French system the legislature can also exercise its influence by means of a commission on foreign relations which may examine a treaty, incidentally discuss the merits of the policy involved in it, and finally recommend its acceptance or rejection. The legislative control, however, in both the British and French systems is relatively less than in the United States, and is due in part to the fact that in Europe, as is not the case in the United States, emergencies are likely to arise that make the immediate centralization of power in the executive department necessary. But with this centralization go disadvantages. It happens that in Great Britain, for

example, parliamentary control cannot usually be exercised until after a course of action adopted by a ministry has become an accomplished fact, and then perhaps too late in the day the ministry, if it has taken a wrong step, may be overthrown. The influence of the British sovereign, though limited in many ways, is still felt in shaping foreign policy, as was shown in the case of the intervention of Queen Victoria in the Trent affair and of the activity of King Edward VII in promoting a friendly understanding with France. The French President has large discretionary power, but he may be restrained indirectly by action of the legislature.

The fundamental difference between the British, French and American systems is that in the latter system the popular check consists mainly in constitutional limitations on the power of the President, while in the former it consists of political control exercised by parliament on the acts of a responsible ministry which is clothed with executive power. The Secretary for Foreign Affairs in Great Britain and France has considerably more independence in directing foreign policy than the American Secretary of State, who acts as the agent of the President and is his subordinate. Parliament in Great Britain and France is sooner affected by an expression of the popular will by ballot than is Congress in the United States, but even in those countries public sentiment is more active in the determination of internal than of external policies, as it is difficult for people to form a judgment on far off affairs of which they know nothing and in which their private interests are not affected. Unless a cabinet is seriously wrong, it is sure to receive in Parliament the support of the party it represents and will not be upset by a difference over a detail. Therefore if the party programme is carried out, the ministers may remain undisturbed even though their foreign policy is objectionable. The executive branch of government has an advantage over Parliament in the European system through the practise of secret diplomacy, for a parliament that is kept in ignorance of the true state of affairs cannot act as intelligently as it should, but the executive branch is never quite sure that it will have support when the true facts are known and votes of credit or approval upon which its policy must depend have to be taken.

In the system in use in the United States are some advantages which the writer points out for consideration. They are derived mainly from constitutional limitations on the executive power. Here, in the initial stages of a foreign policy, particularly in the making of a treaty, the authority is in the hands of the executive branch of the government. It can shape a policy in a treaty, but, by constitutional provision, a treaty must be referred to the Senate before it can become a law. This body therefore can act before rather than after the fact, as is so often not the case, for example in Great Britain. Here, in the United States, there is little chance of secrecy in treaty-making as the conditions under which a treaty is negotiated must be made known to the Senate. But the two-

thirds majority requirement which, in the writer's opinion, is too large, enables a minority to control a situation by compelling indefinite postponement or creating an impasse such as occurred in the discussion of the Treaty of Versailles.

Commenting on the participation of the Senate in treaty-making, the author considers it from one point of view illogical. A treaty once adopted with the approval of the Senate becomes the law of the land, but in case of other acts that become the law of the land both branches of Congress act. He raises the old question of submission of treaties to both branches of Congress for validity instead of to one of them only.

Another advantage of the American system to which he calls attention is that although in the United States the President has large personal influence, as shown in the administration of President McKinley when the United States participated in the rescue of the legations in Peking, in the issuance of the "open door" letter of Mr. Hay without legislative action, and in the attitude of President Wilson at first in keeping the United States neutral and then in bringing matters to a certain crisis that made recognition of a state of war by Congress necessary, the legislative branch, owing to constitutional checks, can on the whole hinder the chief executive from embarking on policies that are contrary to national sentiment and may thus prevent the country from becoming involved in undesirable alliances, protectorates or imperial ventures. The writer dwells upon the superiority of the idea of constitutional checks and concludes that if some day another great democracy should make a choice of systems to bring about increased legislative control of foreign policy it would choose the American system as the better for this purpose than either the British or the French.

Whether Mr. Chow is right in his criticism of the arrangement for the participation of the Senate and not of the House of Representatives also in the validation of a treaty, the debates and votes on the Treaty of Versailles revealed the fact that there is already a powerful element of legislative control representing the entire country in the American system, even though in matters of ratification it extends only to the Senate. Direct political control by ballot is also possible here at stated times and then may be as effective as in France or Great Britain. In a presidential election if a momentous question of foreign policy must be decided, as for example, the acceptance or rejection of a measure like the Covenant of the League of Nations and the Treaty of Versailles, the whole American people can pass judgment on the issue and thus give their mandate to the executive power.

JAMES L. TRYON.

International Law and the World War. By James Wilford Garner. Longmans, Green & Co.: London and New York. 2 vols. pp. 524 and 504. \$24.00.

In this extensive work Professor Garner indulges in what, from his point of view, may properly be denominated a post mortem over such remains of international law applied to war as may be gathered up after the recent struggle. He reviews the multitudinous infractions of so-called laws of war committed by the Central Powers or by the Allies, and affecting, among other things, treatment of diplomatic and consular officers and of enemy aliens; enemy merchant vessels; transfer of merchant vessels to neutral flags; trade and intercourse with the enemy; war contracts; forbidden weapons; hostages; devastation of enemy country; submarine mines and maritime war zone; submarine warfare; defensively armed merchant vessels; bombardments; destruction of monuments; aerial warfare; treatment of prisoners; military government in Belgium; contributions; requisitions and forced labor; collective fines and community responsibility; deportation of civil population; German invasions of Belgium and other neutral territory; occupation of part of Greece by England and France; destruction of neutral merchant vessels; contraband; blockades; interference with mails; exportation of arms to belligerents; effects of war on international law and enforcement of international law in the future; beginning the whole discussion with an examination of what is called the status of international law at least with relation to war and its outbreak.

The whole work is a detailed study of morbid international pathology. In writing it, Professor Garner's labors may be of great value to those who are not particularly concerned in letting the dead past bury its dead. As a complete summing up of the varied forms of violation of common right, humanity and decency which nations indulge in once their tempers are aroused, Professor Garner's work has its place.

While doubtless Professor Garner's presentations with regard to particular facts, or series of facts, are generally sufficient, one notes an occasional lapse. For instance, referring to the case of Captain Fryatt, no stress is laid upon the fact that Fryatt was not shot by Germans upon being caught red-handed fighting capture. Instead, he was captured under entirely different circumstances, and made to suffer penalty for acts performed at a time then long past. Captain Fryatt's situation might have been properly compared with that of a spy who, if caught in the act of spying, could be instantly shot under the customs of war, but who, if captured later in the usual course of military operations, might not be treated otherwise than any other military enemy. Again his case could have been regarded as analogous to that of a blockade running vessel, which, by the same elusive customs, might be captured and condemned as prize if caught trying to break a

blockade, but which might not be troubled when thereafter engaged in commerce having no relation to the war. In other words, the supposed offense was ended by the fact that capture did not immediately follow its commission. In truth, Captain Fryatt's killing was an act of unadulterated vengeance.

In the view of the writer, the dimly appreciated fact lessening the importance of Professor Garner's learned and laborious work, is that properly speaking there are no laws of war having real existence. His travail is postulated, as it were, upon a shifting and uncertain basis with no solid rock of support in right or in binding and enforceable convention. True it is that treaties and Hague Conventions lay down what are assumed to be laws of war between the parties, and these documents are given the high sounding title of law, but they are not law though we may call them such till the "crack o' doom." They offer but the simulacrum of law, not pronounced by a superior, not based upon fundamental right, and not providing for their own enforcement. However we may paint them, they are shams, and smell of decay. "Though she may paint an inch thick, to this favor she must come."

Law, save for rules of convenience and for adjective procedure to make it effective, must be founded upon some ground-work of reason, in turn resting upon elemental principles of right. This may not be said of any of the so-called principles of international law as applied to war. These are habits or customs which may be, and, of course, are broken at will, according to the immediate apparent necessities of the parties concerned. Taking only the time to base a broad analogy upon a narrow instance, we may assume that a state can pass a law prohibiting fighting among its citizens. When it goes further and adds a proviso to the effect that if, notwithstanding, two or more citizens do fight, they shall not strike below the belt, we have in the proviso a fairly perfect analogy to the laws of war. If a treaty may say to the nations concerned that they must keep peace between themselves, and then follow with the statement: "But if you do violate this obligation you must conduct yourselves in a given manner," the treaty involves in its terms the same logical contradiction as would be involved in the prohibition in the imagined proviso of striking below the belt. Its vanity and foolishness would be obvious were it not for the labor of thought and the stupefying influence of things as they are.

War itself is forbidden by decency, humanity, and that broad principle which ought to allow, save under the most extraordinary circumstances, a man to live his own life as long as he may, and not to have it taken from him by the arbitrary whim or fiat even of a state.

We may not declare that the World War has given a death-blow to international law. It has not done so. Relations of right and justice must always exist between nations. The last war has simply disclosed the hollowness of our attempts to classify, under international law, what we term the

laws of war. Nomenclature changes no essential; it cannot make into law the necessary obscenity of war. The cruelties incident to that organized disorder we call war are not subject to external regulation.

"In vain we call old notions fudge,
And bend our conscience to our dealing;
The Ten Commandments will not budge,
And stealing will continue stealing."

And the quotation applies to other things than stealing.

Of course we are not concerned particularly in discussing in this review the right of a nation to defend itself. We may simply point out that in so doing, it of necessity rightfully or wrongfully acts as its own judge and executioner.

JACKSON H. RALSTON

International Law. A Treatise. By L. Oppenheim, M.A., LL.D. Vol. I. Peace. Third Edition. Edited by Ronald F. Roxburgh, Cambridge: Longmans, Green & Co. 1920. pp. 799.

The first edition of this great work appeared, the volume on "Peace," in 1905, on "War and Neutrality" in 1906. Professor Oppenheim brought out a second edition in 1912 and was engaged upon a new edition, which should exhibit the results of the World War, when his health broke down and his untimely death occurred October 7, 1919.

His practice in preparing this new edition was to work from day to day rewriting paragraphs, marking pages for revision and new incidents on the orderly leaves of his own copy. His notes came to an end in July, 1919, and when he died, but few chapters were found ready for the printer. Mr. Roxburgh has embodied the manuscript notes in the text, scrupulously avoiding unnecessary change. In accordance with the wishes of Mrs. Oppenheim and the publisher, he has brought the narrative down to the date of publication. (The date of the preface is June 29, 1920.)

Sections 50a and 50b, dealing with the World War and the Peace Conference, the editor has rewritten "with some guidance from the author's jottings." Sections 94a and 94b, as to "Self-Governing Dominions," had been roughly drafted by the author, but events moved so rapidly that the editor had to recast them. Sections 197a and 197b, on "Air and Aerial Navigation," had to be revised "to embody the new International Air Convention." The sections as to "International Commissions and Offices" have been rewritten in part "to incorporate recent events," as has, for like reason, section 476a as to "the Proposed International Prize Court and the Proposed International Court of Justice," and section 476b, as to the Permanent Court of Arbitration at The Hague has been amplified.

The list of law-making treaties and non-political unions has been revised

and corrected to accord with the action of the Peace Conference of 1919. Professor Oppenheim "had himself written the important sections explaining and discussing the League of Nations," but the editor has added the "section dealing with the Treaties of Peace and the position of Unions after the World War."

The work of the editor has been faithfully, modestly and intelligently accomplished. The volume is devoted to "Peace," and the forthcoming volume to "War." The latter, therefore, must deal with the precedents of the World War which, in the main, do not fit with the topics of Peace.

Professor Oppenheim was born and educated in Germany, but removed to Switzerland in 1891, and to England in 1895. In the latter country he married an English lady, daughter of Lieutenant-Colonel Cowan, and there he achieved his great career as lecturer on international law at the London School of Economics, and from 1908 until his death as Whewell Professor of International Law at Cambridge, in which he worthily succeeded his friend Westlake. He took and held the place of one of England's ripest and most learned publicists, standing loyally by his adopted country during the great war.

His profound acquaintance with the Continental, as well as the English and American authorities, prepared him for a unique service in the discussion of the problems of the years that have passed since his edition of 1912. It is a great loss that his lips are silent and his pen laid down.

On the subject which was thought so vital, the League of Nations, he had expressed himself somewhat fully in a little volume, *The League of Nations and its Problems*, published in 1919, and which he kindly sent to this writer. He there traces the generation of the plans for a world league, and expresses very cautious and hesitant belief in its successful operation.

The present volume devotes to this subject some thirty-seven pages. 1st, to a "Statement of the Birth and General Character of the League;" 2nd, "The Constitution of the League;" 3d, "The Functions of the League;" 4th, "Defects and Merits of the Constitution of the League." These defects, as stated by Professor Oppenheim, may be summed up as follows:

First, that the league was created by the Allied and Associated Powers, not by the free deliberation of all civilized states, and its acceptance by the Central Powers was made obligatory by the Treaties of Peace, and its council consists of representatives of the "Principal Allied and Associated Powers" and of four other Powers; yet, he states, that thirteen neutral states have joined the league (that number is now much greater) and the terms of the Covenant provide opportunity for remedying its defects by amendment; that it has been enabled to undertake numbers of functions required by the treaties and the resettlement of international affairs.

Second, Professor Oppenheim says objection to the predominance of the Great Powers in the Council of the League is unjustified; that those

Powers are the leaders in "The Family of Nations" and when action is required, they must provide such action, and that it is, therefore, right that they should be always represented and predominant in the Council; that the rule requiring unanimity prevents abuse of such predominance.

Third, that the objection that it fails to create a Super State is met by the fact that no single civilized state would have acceded to it if it had created such a Super State, and that any scheme for such creation is, in Professor Oppenheim's opinion, Utopian.

Fourth, that the objection that it is a league of governments and not of peoples is met by the fact that autocracy has almost disappeared and substantially all government is representative; that moreover each nation may select its representative in its own way.

Fifth, and lastly, that the objection that the League is not strong enough to secure peace (which, at the date of the present review, seems established quite beyond controversy) is based on a wrong presumption that the League was intended to be something like a Super State, whereas, it is nothing but "*the organized Family of Nations.*"

Dr. Oppenheim admits as real defects: 1st, that members may withdraw or be expelled from the League, and thus it may cease to represent the Family of Nations; 2nd, that there is no provision for a separate Council of Conciliation; 3d, that it does not make the settlement of judicial disputes, by an International Court of Justice, compulsory; 4th, the right of the Assembly of the League to advise the reconsideration by members of the League of treaties which have become inapplicable, and consideration of international conditions which may threaten the world's peace, he considers a misfortune and contends that as unanimity is required for this action, the large body of the Assembly is unfit for this function; 5th, the absence of a covenant requiring the Council to intervene if a belligerent violates fundamental rules of war, he counts a further fault.

However, Professor Oppenheim thinks that the League has inaugurated a new epoch in the development of mankind by organizing "*the Family of Nations.*" He thinks that "the absence of rigidity in the Constitution permits adaptation to future circumstances."

This reviewer cannot but reflect that it affords every convenience for injurious, as well as for salutary, modification.

It is almost two and a quarter years since our esteemed author wrote this discussion of the League. It seems somewhat trite, stale and perfunctory, at the present time. The phrase "*Family of Nations,*" which proved so attractive to Professor Oppenheim, indicates a relation of common affection which is about as obvious between the nations as between the carnivorous and the herbivorous animals. The months that have passed, since the passages were written by Professor Oppenheim, seem to have developed a considerable faculty in the League for debate and expenditure, the latter especially, upon its own officers and agents. It is difficult to point to many

"ripe fruits" it has produced, or even to any sure and reasonable hope of its growth in usefulness as the result of these fifty-two months. Professor Oppenheim's work, however, in its new edition, will be everywhere welcome. His first edition took almost at once the place of an accepted classic in the great branch of law with which it dealt.

It seems to this reviewer, however, that we must gratefully value it more as the work of a remarkable scholar, of untiring research and vast and varied learning, lucidly presented, than as the creation of a constructive thinker in advanced lines as to the reconstruction of international relations.

Oppenheim's volumes, in a measure, replaced the older work of Hall, always so compendious and satisfactory, except where American views or interests were discussed. There a hostile bias always appeared from which Oppenheim is wholly free. In one respect the present edition falls far short of its predecessors. The paper on which it is printed is vastly inferior, which must be laid to the changes in the paper market, and not to the niggardliness of the publisher.

CHARLES NOBLE GREGORY.

Histoire Diplomatique du Traité de 1839 (19 Avril, 1839). By Alfred de Ridder. Bruxelles et Paris: Vromant & Co. 1920. pp. 399.

At a time when the whole world is absorbed in discussing what happened during the negotiations of the Peace Treaty, it is *à propos* to consider the diplomatic history of that famous treaty which proved to be something more than a scrap of paper, Von Bethmann Hollweg to the contrary notwithstanding. M. de Ridder has given us a very readable and careful study of the incidents and negotiations preceding the signature of the treaty of April 19, 1839, and at the same time portrays the character of Count Barthélémy de Theux de Meyland who, as M. de Ridder remarks, clearly reveals himself in all these incidents in which, as Minister for Foreign Affairs, he took so prominent a part. A preceding volume, entitled *La Belgique et la Prusse en Conflit*, covered the early years of the ministerial career of M. de Theux, when Belgium by the aid of France and England was established as an independent state. But in the two or three years preceding the signature of the treaty of 1839 de Theux was himself responsible for the direction of the negotiations which definitely settled the terms of separation from Holland. After we have read the recital of how he carried out this office, we must agree with M. de Ridder that it would have been impossible to have obtained from the Powers terms more favorable to Belgium (p. 9).

The work is particularly valuable because M. de Ridder as a high official of the Belgian Foreign Office has had access to the documents deposited there. He was also fortunate enough to be supplied with others, especially the archives of the Count de Theux for the period in question. The

policies and characteristics of Leopold I, Palmerston, Metternich, and others are disclosed in the account of the conferences and in the interchange of notes. The Skrynecki affair is a particularly instructive episode of diplomacy. King Leopold of Belgium was sufficiently ill-advised and inconsiderate as to appoint General Skrynecki to a high command in the Belgian army, without consulting his Minister for Foreign Affairs (p. 312 f.). Skrynecki was a Polish refugee established at Prague, and Metternich at once took umbrage and peremptorily demanded his dismissal. With dignity and firmness de Theux refused to humiliate his country, yet was careful to do nothing to irritate Metternich or the Prussian Government, which supported the Austrian statesman at every move. Who after reading this account will assert that Metternich showed himself the equal of de Theux in the art of diplomacy? Preëminent for integrity of character and practical judgment, Count de Theux stands forth nobly portrayed in this his fitting monument.

ELLERY C. STOWELL.

The Truth about the Treaty. By André Tardieu. Indianapolis: Bobbs-Merrill Co. 1921. pp. 473. \$4.00.

"France has taken the Treaty of Peace seriously, just as she took the war. If others have done otherwise, is France to blame?" (Page 431).

"If France is not to doubt England, she must feel that England does not attach less importance to the enforcement of the peace than she herself." (Page 452.)

Casual phrases often reveal an author's real preoccupations more clearly than formal and deliberate argument. M. Tardieu is apprehensive as to the durability of the fabric woven by the *Parcæ* of Versailles. He seems to feel that in the United States the emphasis on nonparticipation in European affairs may, after all, have been something more than a reaction from the strain of the war; while Great Britain, he fears, is slipping back to her tradition of favoring the second rate, and distrusting the first rate European Powers. The "Anglo-Saxons," therefore, have to be spoken to frankly and resolutely. M. Tardieu has, consequently set himself the task of counteracting these tendencies in the United States and Great Britain. He has prepared a detailed analysis of the treaty, not so much from the juridical point of view, as from that of the circumstances surrounding the adoption of its chief provisions. After stating the origin of each principle upon which the treaty was drawn, he traces its fate throughout the Conference. His narrative is interesting and at times absorbing. There are many picturesque personal details. A number of documents are published, and the existence of even more valuable ones revealed. Much statistical matter is presented, not often, however, with adequate bibliographical appar-

atus, while in some instances statements, and even whole tables, fail to indicate clearly which of the various statistical values is intended to be understood,—cost, intrinsic or replacement.

M. Tardieu vigorously repels the enemies of the treaty in France. He is, however, more concerned with the state of opinion in the English-speaking countries. He appeals for their political, financial and moral unity with France in enforcing the treaty. Each of them,—France, the British Empire and the United States,—was an indispensable factor in winning the war, he contends; each is equally indispensable in enforcing the peace. Each sacrificed life and property and happiness to an incredible extent to preserve law and order, the sanctity of treaties, and the rights of small nations. Neither the British Channel nor the Atlantic Ocean, but the Rhine is the “frontier of freedom.” Neither England nor the United States can be secure unless France is secure; and France cannot be secure unless Germany is compelled to repair the damage she has done—as far as it can be repaired. Enforcement of the treaty, then, is the paramount task of the three democratic Powers for their own safety. But it is also their solemn duty, because of the moral obligations of each to the others arising from the trusteeship for the law and peace of the world, which they were forced to assume.

Why, then, in the face of both duty and interest, do the United States and England fail to give evidence of the political, economic and moral unity which is M. Tardieu’s ideal? Is it because they interpret their duty and interest differently? Is it because both, perhaps one particularly, of them regard their interests as not preëminently European, but Asiatic, American, African,—anything else first, and then European? Can it be that the persistence of the policy analyzed more than a generation ago by Sir John Seeley with such refreshing frankness is based on a settled conviction on the part of the British Government as to what is really the British interest on the continent of Europe?

M. Tardieu shows himself a most discerning and astute student of politics. He applies with equal dexterity the methods and approaches of the journalist, the lawyer, the financier, the diplomatist. He must, therefore, have long since perceived that nations are actuated by convictions as to their interests, no matter in what formulæ those convictions are expressed, if expressed at all, and no matter how mistaken their comprehension of the real nature of their interests.

Whatever may be the extent to which M. Tardieu perceives this fundamental principle at work in determining the policy of England toward the enforcement of the treaty, he will certainly realize its force in the case of the United States, especially if his own book is given any widespread circulation. The chief effect of his volume will be precisely to reinforce the attitude of non-participation in European affairs, which he correctly believes to have been greatly strengthened. It will not be because his argument

lacks force, sincerity or eloquence, but because it leaves a very vivid impression of the hopeless and ever more bitter economic and political involvement of Europe. While his appropriate and gracious appeal to sentiment may stir sympathy and gratitude, his picture of the financial situation of Europe will terrify our people and defeat any hope of enlisting their determined support of a policy of participation in the "guarantees" of treaty enforcement. Just as M. Tardieu remarks that France is not to blame for having been fifteen centuries exposed to the invasion of the lawless millions of Germany, and having now to enforce peace in Europe, so will the people of the United States be likely to declare that they are not to blame for having been happily isolated from Europe, and not having now to underwrite the financial fulfillment of the Treaty of 1919. The conviction that non-participation is the correct policy admittedly is strong; it will be strengthened rather than diminished by M. Tardieu's brief.

C. E. MCGUIRE.

Foreign Rights and Interests in China. By Westel W. Willoughby. Baltimore: The Johns Hopkins Press. 1920. pp. xx, 594.

The purpose of Dr. Willoughby's volume as stated in the preface is "to provide a statement of the rights of foreigners and the interests of foreign States in China as they are to be found stated in treaties with or relating to China or in other documents of an official or quasi-official character." That there was a pressing need for such work as the author remarks, few will question, despite the valuable work covering portions of this field which had been previously done by such publicists as H. B. Morse, V. K. Wellington Koo, and M. T. Z. Tyau, to whom Dr. Willoughby gives due credit.

Dr. Willoughby is eminently qualified as a scholar, publicist, former Legal Adviser to the Chinese Government at Peking and experienced traveler in the Orient for the task to which he set himself. The result of his work is, in the judgment of the reviewer, worthy alike of the subject and the author. Dr. Willoughby has prepared a well-balanced, accurate, and thoroughly useful and usable volume which no one who seriously deals with the subject with which he treats can afford to be without. The scope of the work embraces such topics as Extraterritoriality, The Rights of Foreign Merchants, Patent Rights, Foreign Corporations in China, Settlements and Concessions, The Open Door, Spheres of Interest, The Japanese in Manchuria, Shantung, etc., Opium, China's Foreign Debts, and Railway Loans and Foreign Control.

The volume is expository, not argumentative. It is a law book, not a work of political science. As the author states in his preface, the "volume makes no claim to describe present political conditions in China, nor, upon

the side of international law and diplomacy, to estimate the ethical character or practical wisdom of the policies which the several Treaty Powers have pursued in their dealings with China." It must have cost the learned author much self-denial to adhere to the policy thus laid down and to refrain, as he has almost always succeeded in doing, from comment upon the story told by the documents. It is to be hoped that Dr. Willoughby will in the near future find time for the preparation of the further volume suggested by his preface which will comment upon the documentary evidence which is collected and arranged in the present work. However, the old adage that a case well stated is more than half won applies to the present volume. The documents are so well arranged and summarized that in large part they state their own case and assist the reader to draw his own conclusions even with respect to questions of policy.

An especially interesting chapter, and one in which the learned author comes measurably near to overstepping the limitations against comment which he has placed upon himself, is the chapter dealing with "Japan's 'Special Interests' in China,—The Lansing-Ishii Agreement." The facts and circumstances surrounding this interesting diplomatic document which give it color are set forth in detail, and Secretary Lansing's testimony regarding it before the Committee on Foreign Relations of the United States Senate is fully and fairly summarized. While the whole chapter should be carefully read by anyone interested in understanding the Lansing-Ishii Agreement, the general conclusions of the author appear to be fairly inferable from his statements that "giving to the agreement the construction which the Secretary [Mr. Lansing] has given to it there would, in fact, appear no reason why, upon the part of the United States, it should not have been signed," (p. 438) but that "the terms of the agreement are so indefinite as to lay the basis for, rather than to prevent future suspicion and discord," (p. 436) and finally "thus a certain amount of mystery still surrounds the Lansing-Ishii Agreement" (p. 437).

In his introduction the learned author says "the writer has not deceived himself nor does he wish to mislead his readers with the idea that he has made a complete statement of the situation." Such a statement would in any event disarm criticism as respects a matter here and there which the reader would like to see more fully treated, but bearing in mind the limitations imposed by Dr. Willoughby's plan, there is in fact only one chapter which in the opinion of the present reviewer is fairly open to criticism on the ground of inadequacy of treatment, and that is the chapter on "Mongolia and Tibet." This remark applies particularly to the discussion of Tibet, which is treated in less than four pages, or at considerably less length than the same subject is dealt with in Dr. C. C. Wu's memorandum on "The Leading Outstanding Cases Between China and the Foreign Powers" contained in the appendix to B. L. Putnam Weale's *The Fight for the Republic in China*. Probably this slender treatment is due to the difficulty

experienced by Dr. Willoughby in securing authentic documentary evidence with respect to the Tibetan question. This difficulty appears to result from the failure of the Chinese Government to give the facts of the Tibetan negotiations to the world in the same way that the facts of the negotiations with Japan growing out of the Twenty-One Demands were given to the world. This is not to suggest that the Tibetan situation and the situation in Shantung and Manchuria are identical or even comparable, but it is meant to suggest that fairness requires that neither China nor the United States, which means neither Chinese nor American public opinion, should be "respectors of persons"—or countries, and that the British "forward" policy in Tibet should be subjected to the same impartial examination upon its merits in the light of all the evidence as Japan's "Black Dragon" policy in Shantung and Manchuria and in all China.

It is to be hoped, particularly in view of the interest in Chinese affairs sure to result from the conference on the Limitation of Armament and Pacific Problems now about to convene, that Dr. Willoughby will shortly prepare a new edition of his book and that he will endeavor to secure and publish the documentary evidence necessary to a complete understanding of the Tibetan question. The value of Dr. Willoughby's book is greatly enhanced by his references to Mr. J. V. A. MacMurray's *Treaties and Agreements With and Concerning China, 1894-1919*, which are referred to in galley proof. A new edition would have the further advantage of enabling page references to be made to those indispensable volumes.

In conclusion, it is not too much to say that all students of Chinese affairs, whether they pursue the subject from a scholarly or professional viewpoint, are under genuine obligation to Dr. Willoughby for his book.

WILLIAM CULLEN DENNIS.

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[*Abbreviations: BR.*, book review; *CN.*, current note; *Ed.*, editorial comment; *JD.*, judicial decision; *LA.*, leading article.]

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CONVENTION FOR THE CONTROL OF THE TRADE IN ARMS AND AMMUNITION, AND PROTOCOL.¹

Signed at Saint-Germain-en-Laye, September 10, 1919.*

(Translation.)

The United States of America, Belgium, Bolivia, the British Empire, China, Cuba, Ecuador, France, Greece, Guatemala, Haiti, the Hedjaz, Italy, Japan, Nicaragua, Panama, Peru, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Siam and Czecho-Slovakia;

Whereas the long war now ended, in which most nations have successively become involved, has led to the accumulation in various parts of the world of considerable quantities of arms and munitions of war, the dispersal of which would constitute a danger to peace and public order;

Whereas in certain parts of the world it is necessary to exercise special supervision over the trade in, and the possession of, arms and ammunition;

Whereas the existing treaties and conventions, and particularly the Brussels Act of July 2, 1890, regulating the traffic in arms and ammunition in certain regions, no longer meet present conditions, which require more elaborate provisions applicable to a wider area in Africa and the establishment of a corresponding régime in certain territories in Asia;

Whereas a special supervision of the maritime zone adjacent to certain countries is necessary to ensure the efficacy of the measures adopted by the various Governments both as regards the importation of arms and ammunition into those countries and the export of such arms and ammunition from their own territory;

And with the reservation that, after a period of seven years, the present Convention shall be subject to revision in the light of the experience gained, if the Council of the League of Nations, acting if need be by a majority, so recommends;

Have appointed as their Plenipotentiaries:

The President of the United States of America:

The Honourable Frank Lyon Polk, Under-Secretary of State;

¹ Great Britain, Treaty Series, 1919, No. 12.

* Some of the signatures were affixed in Paris and some at Saint-Germain-en-Laye.

The Honourable Henry White, formerly Ambassador Extraordinary and Plenipotentiary of the United States at Rome and Paris;
General Tasker H. Bliss, Military Representative of the United States on the Supreme War Council;

His Majesty the King of the Belgians:

M. Paul Hymans, Minister for Foreign Affairs, Minister of State;
M. Jules van den Heuvel, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Belgians, Minister of State;

M. Emile Vandervelde, Minister of Justice, Minister of State;

The President of the Republic of Bolivia:

M. Ismail Montes, Envoy Extraordinary and Minister Plenipotentiary of Bolivia at Paris;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions Beyond the Seas, Emperor of India:

The Right Honourable Arthur James Balfour, O.M., M.P., His Secretary of State for Foreign Affairs;

The Right Honourable Andrew Bonar Law, M.P., His Lord Privy Seal;

The Right Honourable Viscount Milner, G.C.B., G.C.M.G., His Secretary of State for the Colonies;

The Right Honourable George Nicoll Barnes, M.P., Minister without Portfolio.

And

for the Dominion of Canada:

The Honourable Sir Albert Edward Kemp, K.C.M.G., Minister of the Overseas Forces;

for the Commonwealth of Australia:

The Honourable George Foster Pearce, Minister of Defence;

for the Union of South Africa:

The Right Honourable Viscount Milner, G.C.B., G.C.M.G.;

for the Dominion of New Zealand:

The Honourable Sir Thomas Mackenzie, K.C.M.G., High Commissioner for New Zealand in the United Kingdom;

for India:

The Right Honourable Baron Sinha, K.C., Under-Secretary of State for India;

The President of the Chinese Republic:

M. Lou Tseng-Tsiang, Minister for Foreign Affairs;

M. Chengting Thomas Wang, formerly Minister of Agriculture and Commerce;

The President of the Cuban Republic:

M. Antonio Sanchez de Bustamante, Dean of the Faculty of Law in the University of Havana, President of the Cuban Society of International Law;

The President of the Republic of Ecuador:

M. Dorn y de Alsua, Envoy Extraordinary and Minister Plenipotentiary of Ecuador at Paris;

The President of the French Republic:

M. Georges Clemenceau, President of the Council, Minister of War;

M. Stephen Pichon, Minister for Foreign Affairs;

M. Louis-Lucien Klotz, Minister of Finance;

M. André Tardieu, Commissary-General for Franco-American Military Affairs;

M. Jules Cambon, Ambassador of France;

His Majesty the King of the Hellenes:

M. Nicolas Politis, Minister for Foreign Affairs;

M. Athos Romanos, Envoy Extraordinary and Minister Plenipotentiary to the French Republic;

The President of the Republic of Guatemala:

M. Joaquim Mendez, formerly Minister of State for Public Works and Public Instruction, Envoy Extraordinary and Minister Plenipotentiary of Guatemala at Washington, Envoy Extraordinary and Minister Plenipotentiary on Special Mission at Paris;

The President of the Republic of Haiti:

M. Tertullien Guilbaud, Envoy Extraordinary and Minister Plenipotentiary of Haiti to Ecuador;

His Majesty the King of the Hedjaz:

M. Rustem Haidar;

M. Abdul Hadi Aouni;

His Majesty the King of Italy:

The Honourable Tommaso Tittoni, Senator of the Kingdom, Minister for Foreign Affairs;

The Honourable Vittorio Scialoja, Senator of the Kingdom;

The Honourable Maggiorino Ferraris, Senator of the Kingdom;

The Honourable Guglielmo Marconi, Senator of the Kingdom;

The Honourable Silvio Crespi, Deputy;

His Majesty the Emperor of Japan:

Viscount Chinda, Ambassador Extraordinary and Plenipotentiary of H.M. the Emperor of Japan at London;

M. K. Matsui, Ambassador Extraordinary and Plenipotentiary of H.M. the Emperor of Japan at Paris;

M. H. Ijuin, Ambassador Extraordinary and Plenipotentiary of
H.M. the Emperor of Japan at Rome;

The President of the Republic of Nicaragua:

M. Salvador Chamorro, President of the Chamber of Deputies;

The President of the Republic of Panama:

M. Antonio Burgos, Envoy Extraordinary and Minister Plenipotentiary of Panama at Madrid;

The President of the Republic of Peru:

M. Carlos G. Candamo, Envoy Extraordinary and Minister Plenipotentiary of Peru at Madrid;

The President of the Polish Republic:

M. Ignace J. Paderewski, President of the Council of Ministers,
Minister for Foreign Affairs;

M. Roman Dmowski, President of the Polish National Committee;

The President of the Portuguese Republic:

Dr. Affonso da Costa, formerly President of the Council of Ministers;

Dr. Augusto Luiz Vieira Soares, formerly Minister for Foreign
Affairs;

His Majesty the King of Roumania:

M. Nicolas Misu, Envoy Extraordinary and Minister Plenipotentiary
of Roumania at London;

Dr. Alexander Vaida-Voevod, Minister without Portfolio;

His Majesty the King of the Serbs, the Croats, and the Slovenes:

M. N. P. Pachitch, formerly President of the Council of Ministers;

M. Ante Trumbic, Minister for Foreign Affairs;

M. Ivan Zolger, Doctor at Law;

His Majesty the King of Siam:

His Highness Prince Charoon, Envoy Extraordinary and Minister
Plenipotentiary of H.M. the King of Siam at Paris;

His Serene Highness Prince Traidon Prabandhu, Under-Secretary
of State for Foreign Affairs;

The President of the Czecho-Slovak Republic:

M. Charles Kramar, President of the Council of Ministers;

M. Edouard Benes, Minister for Foreign Affairs;

Who, having communicated their full powers found in good and due
form,

Have agreed as follows:

CHAPTER I.

Export of Arms and Ammunition.

ARTICLE 1.

The High Contracting Parties undertake to prohibit the export of the following arms of war: artillery of all kinds, apparatus for the discharge of all kinds of projectiles, explosive or gas-diffusing, flame-throwers, bombs, grenades, machine-guns and rifled small-bore breech-loading weapons of all kinds, as well as the exportation of the ammunition for use with such arms. The prohibition of exportation shall apply to all such arms and ammunition, whether complete or in parts.

Nevertheless, notwithstanding this prohibition, the High Contracting Parties reserve the right to grant, in respect of arms whose use is not prohibited by International Law, export licences to meet the requirements of their Governments or those of the Government of any of the High Contracting Parties, but for no other purpose.

In the case of firearms and ammunition adapted both to warlike and also to other purposes, the High Contracting Parties reserve to themselves the right to determine from the size, destination, and other circumstances of each shipment for what uses it is intended and to decide in each case whether the provisions of this Article are applicable to it.

ARTICLE 2.

The High Contracting Parties undertake to prohibit the export of firearms and ammunition, whether complete or in parts, other than arms and munitions of war, to the areas and zone specified in Article 6.

Nevertheless, notwithstanding this prohibition, the High Contracting Parties reserve the right to grant export licences on the understanding that such licences shall be issued only by their own authorities. Such authorities must satisfy themselves in advance that the arms or ammunition for which an export licence is requested are not intended for export to any destination, or for disposal in any way, contrary to the provisions of this Convention.

ARTICLE 3.

Shipments to be effected under contracts entered into before the coming into force of the present Convention shall be governed by its provisions.

ARTICLE 4.

The High Contracting Parties undertake to grant no export licences to any country which refuses to accept the tutelage under which it has been placed, or which, after having been placed under the tutelage of any Power,

may endeavour to obtain from any other Power any of the arms or ammunition specified in Articles 1 and 2.

ARTICLE 5.

A Central International Office, placed under the control of the League of Nations, shall be established for the purpose of collecting and preserving documents of all kinds exchanged by the High Contracting Parties with regard to the trade in, and distribution of, the arms and ammunition specified in the present Convention.

Each of the High Contracting Parties shall publish an annual report showing the export licences which it may have granted, together with the quantities and destination of the arms and ammunition to which the export licences referred. A copy of this report shall be sent to the Central International Office and to the Secretary-General of the League of Nations.

Further, the High Contracting Parties agree to send to the Central International Office and to the Secretary-General of the League of Nations full statistical information as to the quantities and destination of all arms and ammunition exported without licence.

CHAPTER II.

Import of Arms and Ammunition. Prohibited Areas and Zone of Maritime Supervision.

ARTICLE 6.

The High Contracting Parties undertake, each as far as the territory under its jurisdiction is concerned, to prohibit the importation of the arms and ammunition specified in Articles 1 and 2 into the following territorial areas, and also to prevent their importation and transportation in the maritime zone defined below:

1. The whole of the Continent of Africa with the exception of Algeria, Libya and the Union of South Africa.

Within this area are included all islands situated within a hundred nautical miles of the coast, together with Prince's Island, St. Thomas Island and the Islands of Annobon and Socotra.

2. Transcaucasia, Persia, Gwadar, the Arabian Peninsula and such continental parts of Asia as were included in the Turkish Empire on August 4, 1914.

3. A maritime zone, including the Red Sea, the Gulf of Aden, the Persian Gulf and the Sea of Oman, and bounded by a line drawn from Cape Guardafui, following the latitude of that cape to its intersection with longitude 57° east of Greenwich, and proceeding thence direct to the eastern frontier of Persia in the Gulf of Oman.

Special licences for the import of arms or ammunition into the areas defined above may be issued. In the African area they shall be subject to the regulations specified in Articles 7 and 8 or to any local regulations of a stricter nature which may be in force. In the other areas specified in the present Article, these licences shall be subject to similar regulations put into effect by the Governments exercising authority there.

CHAPTER III.

Supervision on Land.

ARTICLE 7.

Arms and Ammunition imported under special licence into the prohibited areas shall be admitted only at ports designated for this purpose by the Authorities of the State, Colony, Protectorate or territory under mandate concerned.

Such arms and ammunition must be deposited by the importer at his own risk and expense in a public warehouse under the exclusive custody and permanent control of the Authority and of its agents, of whom one at least must be a civil official or a military officer. No arms or ammunition shall be deposited or withdrawn without the previous authorisation of the administration of the State, Colony, Protectorate or territory under mandate, unless the arms and ammunition to be deposited or withdrawn are intended for the forces of the Government or the defence of the national territory.

The withdrawal of arms or ammunition deposited in these warehouses shall be authorised only in the following cases:—

1. For despatch to places designated by the Government where the inhabitants are allowed to possess arms, under the control and responsibility of the local Authorities, for the purpose of defence against robbers or rebels.

2. For despatch to places designated by the Government as warehouses and placed under the supervision and responsibility of the local Authorities.

3. For individuals who can show that they require them for their legitimate personal use.

ARTICLE 8.

In the prohibited areas specified in Article 6, trade in arms and ammunition shall be placed under the control of officials of the Government and shall be subject to the following regulations:

1. No person may keep a warehouse for arms or ammunition without a licence.

2. Any person licenced to keep a warehouse for arms or ammunition must reserve for that special purpose enclosed premises having only one

entry, provided with two locks, one of which can be opened only by the officers of the Government.

The person in charge of a warehouse shall be responsible for all arms or ammunition deposited therein and must account for them on demand. For this purpose all deposits or withdrawals shall be entered in a special register, numbered and initialled. Each entry shall be supported by references to the official documents authorising such deposits or withdrawals.

3. No transport of arms or ammunition shall take place without a special licence.

4. No withdrawal from a private warehouse shall take place except under licence issued by the local Authority on an application stating the purpose for which the arms or ammunition are required, and supported by a licence to carry arms or by a special permit for the purchase of ammunition. Every arm shall be registered and stamped; the Authority in charge of the control shall enter on the licence to carry arms the mark stamped on the weapon.

5. No one shall without authority transfer to another person either by gift or for any consideration any weapon or ammunition which he is licensed to possess.

ARTICLE 9.

In the prohibited areas and zone specified in Article 6 the manufacture and assembling of arms or ammunition shall be prohibited, except at arsenals established by the local Government or, in the case of countries placed under tutelage, at arsenals established by the local Government, under the control of the mandatory Power, for the defence of its territory or for the maintenance of public order.

No arms shall be repaired except at arsenals or establishments licensed by the local Government for this purpose. No such licence shall be granted without guarantees for the observance of the rules of the present Convention.

ARTICLE 10.

Within the prohibited areas specified in Article 6, a State which is compelled to utilise the territory of a contiguous State for the importation of arms or ammunition, whether complete or in parts, or of material or of articles intended for armament, shall be authorised on request to have them transported across the territory of such State.

It shall, however, when making any such request, furnish guarantees that the said articles are required for the needs of its own Government, and will at no time be sold, transferred or delivered for private use nor used in any way contrary to the interests of the High Contracting Parties.

Any violation of these conditions shall be formally established in the following manner:—

(a) If the importing State is a sovereign independent Power, the proof of the violation shall be advanced by one or more of the Representatives

accredited to it of contiguous States among the High Contracting Parties. After the Representatives of the other contiguous States have, if necessary, been informed, a joint enquiry into the facts by all these Representatives will be opened, and if need be, the importing State will be called upon to furnish explanations. If the gravity of the case should so require, and if the explanations of the importing State are considered unsatisfactory, the Representatives will jointly notify the importing State that all transit licences in its favour are suspended and that all future requests will be refused until it shall have furnished new and satisfactory guarantees.

The forms and conditions of the guarantees provided by the present Article shall be agreed upon previously by the Representatives of the contiguous States among the High Contracting Parties. These Representatives shall communicate to each other, as and when issued, the transit licences granted by the competent authorities.

(b) If the importing State has been placed under the mandatory system established by the League of Nations, the proof of the violation shall be furnished by one of the High Contracting Parties or on its own initiative by the Mandatory Power. The latter shall then notify or demand, as the case may be, the suspension and future refusal of all transit licences.

In cases where a violation has been duly proved, no further transit licence shall be granted to the offending State without the previous consent of the Council of the League of Nations.

If any proceedings on the part of the importing State or its disturbed condition should threaten the public order of one of the contiguous State signatories of the present Convention, the importation in transit of arms, ammunition, material and articles intended for armament shall be refused to the importing State by all the contiguous States until order has been restored.

CHAPTER IV.

Maritime Supervision.

ARTICLE 11.

Subject to any contrary provisions in existing special agreements, or in future agreements, provided that in all cases such agreements comply with the provisions of the present Convention, the sovereign State or Mandatory Power shall carry out all supervision and police measures within territorial waters in the prohibited areas and zone specified in Article 6.

ARTICLE 12.

Within the prohibited areas and maritime zone specified in Article 6, no native vessel of less than 500 tons burden shall be allowed to ship, discharge, or transship arms or ammunition.

For this purpose, a vessel shall be considered as a native vessel if she is either owned by a native, or fitted out or commanded by a native, or if more than half of the crew are natives of the countries bordering on the Indian Ocean, the Red Sea, the Persian Gulf, or the Gulf of Oman.

This provision does not apply to lighters or barges, nor to vessels which, without going more than five miles from the shore, are engaged exclusively in the coasting trade between different ports of the same State, Colony, Protectorate or territory under mandate, where warehouses are situated.

No cargoes of arms or ammunition shall be shipped on the vessels specified in the preceding paragraph without a special licence from the territorial authority, and all arms or ammunition so shipped shall be subject to the provisions of the present Convention.

This licence shall contain all details necessary to establish the nature and quantity of the items of the shipment, the vessel on which the shipment is to be loaded, the name of the ultimate consignee, and the ports of loading and discharge. It shall also be specified thereon that the licence has been issued in conformity with the regulations of the present Convention.

The above regulations do not apply:

1. To arms or ammunition conveyed on behalf of the Government, provided that they are accompanied by a duly qualified official.
2. To arms or ammunition in the possession of persons provided with a licence to carry arms, provided such arms are for the personal use of the bearer and are accurately described on his licence.

ARTICLE 13.

To prevent all illicit conveyance of arms or ammunition within the zone of maritime supervision specified in Article 6 (3), native vessels of less than 500 tons burden not exclusively engaged in the coasting trade between different ports of the same State, Colony, Protectorate or territory under mandate, not going more than five miles from the shore, and proceeding to or from any point within the said zone, must carry a manifest of their cargo or similar document specifying the quantities and nature of the goods on board, their origin and destination. This document shall remain covered by the secrecy to which it is entitled by the law of the State to which the vessel belongs, and must not be examined during the proceedings for the verification of the flag unless the interested party consents thereto.

The provisions as to the above-mentioned documents shall not apply to vessels only partially decked, having a maximum crew of ten men, and exclusively employed in fishing within territorial waters.

ARTICLE 14.

Authority to fly the flag of one of the High Contracting Parties within the zone of maritime supervision specified in Article 6 (3) shall be granted only to such native vessels as satisfy all the three following conditions:

1. The owners must be nationals of the Power whose flag they claim to fly.

2. They must furnish proof that they possess real estate in the district of the authority to which their application is addressed, or must supply a solvent security as a guarantee for any fines to which they may become liable.

3. Such owners, as well as the captain of the vessel, must furnish proof that they enjoy a good reputation, and especially that they have never been convicted of illicit conveyance of the articles referred to in the present Convention.

The authorisation must be renewed every year. It shall contain the indications necessary to identify the vessel; the name, tonnage, type of rigging, principal dimensions, registered number, and signal letters. It shall bear the date on which it was granted and the status of the official who granted it.

The name of the native vessel and the amount of her tonnage shall be incised and painted in Latin characters on the stern, and the initial letters of the name of the port of registry, as well as the registration number in the series of the numbers of that port, shall be painted in black on the sails.

ARTICLE 15.

Native vessels to which, under the provisions of the last paragraph of Article 13, the regulations relating to the manifest of the cargo are not applicable, shall receive from the territorial or consular authorities, as the case may be, a special licence, renewable annually and revocable under the conditions provided for in Article 19.

This special licence shall show the name of the vessel, her description, nationality, port of registry, name of captain, name of owner and the waters in which she is allowed to sail.

ARTICLE 16.

The High Contracting Parties agree to apply the following rules in the maritime zone specified in Article 6 (3):—

1. When a warship belonging to one of the High Contracting Parties encounters outside territorial waters a native vessel of less than 500 tons burden flying the flag of one of the High Contracting Parties, and the commander of the warship has good reason to believe that the native vessel is flying this flag without being entitled to do so, for the purpose of the illicit conveyance of arms or ammunition, he may proceed to verify the nationality of the vessel by examining the document authorising the flying of the flag, but no other papers.

2. With this object, a boat commanded by a commissioned officer in uniform may be sent to visit the suspected vessel after she has been hailed

to give notice of such intention. The officer sent on board the vessel shall act with all possible consideration and moderation; before leaving the vessel the officer shall draw up a *procès-verbal* in the form and language in use in his own country. This *procès-verbal* shall state the facts of the case and shall be dated and signed by the officer.

Should there be on board the warship no commissioned officer other than the commanding officer, the above-prescribed operations may be carried out by the warrant, petty, or non-commissioned officer highest in rank.

The captain or master of the vessel visited, as well as the witnesses, shall be invited to sign the *procès-verbal*, and shall have the right to add to it any explanations which they may consider expedient.

3. If the authorisation to fly the flag cannot be produced, or if this document is not in proper order, the vessel shall be conducted to the nearest port in the zone where there is a competent authority of the Power whose flag has been flown and shall be handed over to such authority.

Should the nearest competent authority representing the Power whose flag the vessel has flown be at some port at such a distance from the point of arrest that the warship would have to leave her station or patrol to escort the captured vessel to that port, the foregoing regulation need not be carried out. In such a case, the vessel may be taken to the nearest port where there is a competent authority of one of the High Contracting Parties of nationality other than that of the warship, and steps shall at once be taken to notify the capture to the competent authority representing the Power concerned.

No proceedings shall be taken against the vessel or her crew until the arrival of the representative of the Power whose flag the vessel was flying or without instructions from him.

4. The procedure laid down in paragraph 3 may be followed if, after the verification of the flag and in spite of the production of the manifest, the commander of the warship continues to suspect the native vessel of engaging in the illicit conveyance of arms or ammunition.

The High Contracting Parties concerned shall appoint in the zone territorial or consular authorities or special representatives competent to act in the foregoing cases, and shall notify their appointment to the Central Office and to the other Contracting Parties.

The suspected vessel may also be handed over to a warship of the nation whose flag she has flown, if the latter consents to take charge of her.

ARTICLE 17.

The High Contracting Parties agree to communicate to the Central Office specimen forms of the documents mentioned in Articles 12, 13, 14 and 15, as well as a detailed list of the licences granted in accordance with the provisions of this Chapter whenever such licences are granted.

ARTICLE 18.

The authority before whom the suspected vessel has been brought shall institute a full enquiry in accordance with the laws and rules of his country in the presence of an officer of the capturing warship.

If it is proved at this enquiry that the flag has been illegally flown, the detained vessel shall remain at the disposal of the captor, and those responsible shall be brought before the courts of his country.

If it should be established that the use of the flag by the detained vessel was correct, but that the vessel was engaged in the illicit conveyance of arms or ammunition, those responsible shall be brought before the courts of the State under whose flag the vessel sailed. The vessel herself and her cargo shall remain in charge of the authority directing the inquiry.

ARTICLE 19.

Any illicit conveyance or attempted conveyance legally established against the captain or owner of a vessel authorised to fly the flag of one of the Signatory Powers or holding the licence provided for in Article 15 shall entail the immediate withdrawal of the said authorisation or licence.

The High Contracting Parties will take the necessary measures to ensure that their territorial authorities or their consuls shall send to the Central Office certified copies of all authorisations to fly their flag as soon as such authorisations shall have been granted, as well as notice of withdrawal of any such authorisation. They also undertake to communicate to the said Office copies of the licences provided for under Article 15.

ARTICLE 20.

The commanding officer of a warship who may have detained a vessel flying a foreign flag shall in all cases make a report thereon to his Government, stating the grounds on which he acted.

An extract from this report, together with a copy of the *procès-verbal* drawn up by the officer, warrant officer, petty or non-commissioned officer sent on board the vessel detained shall be sent as soon as possible to the Central Office and at the same time to the Government whose flag the detained vessel was flying.

ARTICLE 21.

If the authority entrusted with the enquiry decides that the detention and diversion of the vessel or the measures imposed upon her were irregular, he shall fix the amount of the compensation due. If the capturing officer, or the authorities to whom he is subject, do not accept the decision or contest the amount of the compensation awarded, the dispute shall be submitted to a court of arbitration consisting of one arbitrator appointed by the Government whose flag the vessel was flying, one appointed by the Govern-

ment of the capturing officer, and an umpire chosen by the two arbitrators thus appointed. The two arbitrators shall be chosen, as far as possible, from among the diplomatic, consular or judicial officers of the High Contracting Parties. These appointments must be made with the least possible delay, and natives in the pay of the High Contracting Parties shall in no case be appointed. Any compensation awarded shall be paid to the person concerned within six months at most from the date of the award.

The decision shall be communicated to the Central Office and to the Secretary-General of the League of Nations.

CHAPTER V.

General Provisions.

ARTICLE 22.

The High Contracting Parties who exercise authority over territories within the prohibited areas and zone specified in Article 6 agree to take, so far as each may be concerned, the measures required for the enforcement of the present Convention, and in particular for the prosecution and repression of offences against the provisions contained therein.

They shall communicate these measures to the Central Office and to the Secretary-General of the League of Nations, and shall inform them of the competent authorities referred to in the preceding Articles.

ARTICLE 23.

The High Contracting Parties will use their best endeavours to secure the accession to the present Convention of other States Members of the League of Nations.

This accession shall be notified through the diplomatic channel to the Government of the French Republic, and by it to all the signatory or adhering States. The accession will come into force from the date of such notification to the French Government.

ARTICLE 24.

The High Contracting Parties agree that if any dispute whatever should arise between them relating to the application of the present Convention which cannot be settled by negotiation, this dispute shall be submitted to an arbitral tribunal in conformity with the provisions of the Covenant of the League of Nations.

ARTICLE 25.

All the provisions of former general international Conventions, relating to the matters dealt with in the present Convention, shall be considered as

abrogated in so far as they are binding between the Powers which are Parties to the present Convention.

ARTICLE 26.

The present Convention shall be ratified as soon as possible.

Each Power will address its ratification to the French Government, who will inform all the other signatory Powers.

The ratifications will remain deposited in the archives of the French Government.

The present Convention shall come into force for each Signatory Power from the date of the deposit of its ratification, and from that moment that Power will be bound in respect of other Powers which have already deposited their ratifications.

On the coming into force of the present Convention, the French Government will transmit a certified copy to the Powers which under the Treaties of Peace have undertaken to accept and observe it, and are in consequence placed in the same position as the Contracting Parties. The names of these Powers will be notified to the States which accede.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done at Paris,* the tenth day of September, one thousand nine hundred and nineteen, in a single copy which will remain deposited in the archives of the Government of the French Republic, and of which authentic copies will be sent to each of the Signatory Powers.

(L.S.)	GEO. N. BARNES.
(L.S.)	A. E. KEMP.
(L.S.)	G. F. PEARCE.
(L.S.)	MILNER.
(L.S.)	THOMAS MACKENZIE.
(L.S.)	SINHA OF RAIPUR.
(L.S.)	J. R. LOUTSENGTSIANG.
(L.S.)	CHENGTING THOMAS WANG.
(L.S.)	ANTONIO S. DE BUSTAMANTE.
(L.S.)	E. DORN Y DE ALSUA.
(L.S.)	G. CLEMENCEAU.
(L.S.)	S. PICHON.
(L.S.)	L. L. KLOTZ.
(L.S.)	ANDRÉ TARDIEU.
(L.S.)	JULES CAMBON.
(L.S.)	N. POLITIS.
(L.S.)	A. ROMANOS.
(L.S.)	M. RUSTEM HAIDAR.

* Some of the signatures were affixed in Paris and some at Saint-Germain-en-Laye.

(L.S.)	ABDUL HADI AOUNI.
(L.S.)	TOM. TITTONI.
(L.S.)	VITTORIO SCIALOJA.
(L.S.)	MAGGIORINO FERRARIS.
(L.S.)	GUGLIELMO MARCONI.
(L.S.)	S. CHINDA.
(L.S.)	K. MATSUI.
(L.S.)	H. IJUIN.
(L.S.)	SALVADOR CHAMORRO.
(L.S.)	ANTONIO BURGOS.
(L.S.)	I. J. PALEREWski.
(L.S.)	ROMAN DYMOWSKI.
(L.S.)	AFFONSO COSTA.
(L.S.)	AUGUSTO SOARES.
(L.S.)	N. MISU.
(L.S.)	ALEX VAIDA VOEVOD.
(L.S.)	
(L.S.)	DR. YVAN ZOLGER.
(L.S.)	CHAROON.
(L.S.)	TRAIKOS PRABANDHU.
(L.S.)	D. KAREL KRAMAR.
(L.S.)	DR. EDUARD BENES.

PROTOCOL.

At the moment of signing the Convention of even date relating to the trade in arms and ammunition, the undersigned Plenipotentiaries declare in the name of their respective Governments that they would regard it as contrary to the intention of the High Contracting Parties and to the spirit of this Convention that, pending the coming into force of the Convention, a Contracting Party should adopt any measure which is contrary to its provisions.

Done at Saint-Germain-en-Laye,* in a single copy, the tenth day of September, one thousand nine hundred and nineteen

FRANK L. POLK.
 HENRY WHITE.
 TASKER H. BLISS.
 HYMANS.
 J. VAN DEN HEUVEL.
 E. VANDERVELDE.
 ISMAIL MONTES.

* Some of the signatures were affixed in Paris and some at Saint-Germain-en-Laye.

ARTHUR JAMES BALFOUR.
MILNER.
GEO. N. BARNES.
A. E. KEMP.
G. F. PEARCE.
MILNER.
THOS. MACKENZIE.
SINHA OF RAIPUR.
J. R. LOUTSENGTSIANG.
CHENGTING THOMAS WANG.
ANTONIO S. DE BUSTAMANTE.
E. DORN Y DE ALSUA.
G. CLEMENCEAU.
S. PICHON.
L. L. KLOTZ.
ANDRÉ TARDIEU.
JULES CAMBON.
N. POLITIS.
A. ROMANOS.
M. RUSTEM HAIDAR.
ABDUL HADI AOUNI.
TOM. TITTONI.
VITTORIO SCIALOJA.
MAGGIORINO FERRARIS.
GUGLIELMO MARCONI.
S. CHINDA.
K. MATSUI.
H. IJUIN.
SALVADOR CHAMORRO.
ANTONIO BURGOS.
I. J. PADEREWSKI.
ROMAN DMOWSKI.
AFFONSO COSTA.
AUGUSTO SOARES.
N. MISU.
ALEX. VAIDA VOEVOD.
DR. IVAN ZOLGER.
CHAROON.
TRAIDOS PRABANDHU.
D. KAREL KRAMAR.
DR. EDUARD BENES.

CONVENTION REVISING THE GENERAL ACT OF BERLIN, FEBRUARY 26, 1885, AND
THE GENERAL ACT AND DECLARATION OF BRUSSELS, JULY 2, 1890.¹

Signed at Saint-Germain-en-Laye, September 10, 1919.

(Translation.)

The United States of America, Belgium, The British Empire, France, Italy, Japan and Portugal;

Whereas the General Act of the African Conference, signed at Berlin on February 26, 1885, was primarily intended to demonstrate the agreement of the Powers with regard to the general principles which should guide their commercial and civilising action in the little-known or inadequately organised regions of a continent where slavery and the slave trade still flourished; and

Whereas by the Brussels Declaration of July 2, 1890, it was found necessary to modify for a provisional period of fifteen years the system of free imports established for twenty years by Article 4 of the said Act, and since that date no agreement has been entered into, notwithstanding the provisions of the said Act and Declaration; and

Whereas the territories in question are now under the control of recognised authorities, are provided with administrative institutions suitable to the local conditions, and the evolution of the native populations continues to make progress;

Wishing to ensure by arrangements suitable to modern requirements the application of the general principles of civilisation established by the Acts of Berlin and Brussels,

Have appointed as their Plenipotentiaries:

The President of the United States of America:

The Honourable Frank Lyon Polk, Under-Secretary of State;

The Honourable Henry White, formerly Ambassador Extraordinary and Plenipotentiary of the United States at Rome and Paris;

General Tasker H. Bliss, Military Representative of the United States on the Supreme War Council;

His Majesty the King of the Belgians:

M. Paul Hymans, Minister for Foreign Affairs, Minister of State;

M. Jules van den Heuvel, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Belgians, Minister of State;

M. Emile Vandervelde, Minister of Justice, Minister of State;

His Majesty the King of Great Britain and Ireland and of the British Dominions Beyond the Seas, Emperor of India:

¹ Great Britain, Treaty Series, 1919, No. 18.

The Right Honourable Arthur James Balfour, O.M., M.P., His Secretary of State for Foreign Affairs;

The Right Honourable Andrew Bonar Law, M.P., His Lord Privy Seal;

The Right Honourable Viscount Milner, G.C.B., G.C.M.G., His Secretary of State for the Colonies;

The Right Honourable George Nicoll Barnes, M.P., Minister without Portfolio;

And:

for the Dominion of Canada:

The Honourable Sir Albert Edward Kemp, K.C.M.G., Minister of the Overseas Forces;

for the Commonwealth of Australia:

The Honourable George Foster Pearce, Minister of Defence;

for the Union of South Africa:

The Right Honourable Viscount Milner, G.C.B., G.C.M.G.;

for the Dominion of New Zealand:

The Honourable Sir Thomas Mackenzie, K.C.M.G., High Commissioner for New Zealand in the United Kingdom;

for India:

The Right Honourable Baron Sinha, K.C., Under-Secretary of State for India;

The President of the French Republic:

M. Georges Clemenceau, President of the Council, Minister of War;

M. Stephen Pichon, Minister for Foreign Affairs;

M. Louis-Lucien Klotz, Minister of Finance;

M. André Tardieu, Commissary-General for Franco-American Military Affairs;

M. Jules Cambon, Ambassador of France;

His Majesty the King of Italy:

The Honourable Tommaso Tittoni, Senator of the Kingdom, Minister for Foreign Affairs.

The Honourable Vittorio Scialoja, Senator of the Kingdom;

The Honourable Maggiorino Ferraris, Senator of the Kingdom;

The Honourable Guglielmo Marconi, Senator of the Kingdom;

The Honourable Silvio Crespi, Deputy;

His Majesty the Emperor of Japan:

Viscount Chinda, Ambassador Extraordinary and Plenipotentiary of H.M. the Emperor of Japan at London;

M. K. Matsui, Ambassador Extraordinary and Plenipotentiary of
H.M. the Emperor of Japan at Paris;

M. H. Ijuin, Ambassador Extraordinary and Plenipotentiary of
H.M. the Emperor of Japan at Rome;

The President of the Portuguese Republic:

Dr. Affonso da Costa, formerly President of the Council of Ministers;

Dr. Augusto Luiz Viera Soares, formerly Minister for Foreign
Affairs;

Who, after having communicated their full powers recognised in good
and due form,

Have agreed as follows:

ARTICLE 1.

The Signatory Powers undertake to maintain between their respective
nationals and those of States, Members of the League of Nations, which
may adhere to the present Convention a complete commercial equality in
the territories under their authority within the area defined by Article 1
of the General Act of Berlin of February 26, 1885, set out in the Annex
hereto, but subject to the reservation specified in the final paragraph of that
article.

ANNEX.

Article 1 of the General Act of Berlin of February 26, 1885.

The trade of all nations shall enjoy complete freedom:

1. In all the regions forming the basin of the Congo and its outlets.
This basin is bounded by the watersheds (or mountain ridges) of the ad-
jacent basins, namely in particular, those of the Niari, the Ogowé, the
Shari, and the Nile, on the north; by the eastern watershed line of the
affluents of Lake Tanganyika on the east; and by the watersheds of the
basins of the Zambesi and the Logé on the south. It therefore comprises
all the regions watered by the Congo and its affluents, including Lake Tan-
ganyika, with its eastern tributaries.

2. In the maritime zone extending along the Atlantic Ocean from the
parallel situated in 2° 30' of south latitude to the mouth of the Logé.

The northern boundary will follow the parallel situated in 2° 30' from
the coast to the point where it meets the geographical basin of the Congo,
avoiding the basin of the Ogowé, to which the provisions of the present
Act do not apply.

The southern boundary will follow the course of the Logé to its source,
and thence pass eastwards till it joins the geographical basin of the Congo.

3. In the zone stretching eastwards from the Congo Basin as above
defined, to the Indian Ocean from 5° of north latitude to the mouth of the
Zambesi in the south, from which point the line of demarcation will ascend

the Zambesi to 5 miles above its confluence with the Shiré, and then follow the watershed between the affluents of Lake Nyassa and those of the Zambesi, till at last it reaches the watershed between the waters of the Zambesi and the Congo.

It is expressly recognised that in extending the principle of free trade to this eastern zone, the Conference Powers only undertake engagements for themselves, and that in the territories belonging to an independent Sovereign State this principle shall only be applicable in so far as it is approved by such State. But the Powers agree to use their good offices with the Governments established on the African shore of the Indian Ocean for the purpose of obtaining such approval, and in any case of securing the most favourable conditions to the transit (traffic) of all nations.

ARTICLE 2.

Merchandise belonging to the nationals of the Signatory Powers, and to those of States, Members of the League of Nations, which may adhere to the present Convention, shall have free access to the interior of the regions specified in Article 1. No differential treatment shall be imposed upon the said merchandise on importation or exportation, the transit remaining free from all duties, taxes or dues, other than those collected for services rendered.

Vessels flying the flag of any of the said Powers shall also have access to all the coast and to all maritime ports in the territories specified in Article 1; they shall be subject to no differential treatment.

Subject to these provisions, the States concerned reserve to themselves complete liberty of action as to the customs and navigation regulations and tariffs to be applied in their territories.

ARTICLE 3.

In the territories specified in Article 1 and placed under the authority of one of the Signatory Powers, the nationals of those Powers, or of States, Members of the League of Nations, which may adhere to the present Convention shall, subject only to the limitations necessary for the maintenance of public security and order, enjoy without distinction the same treatment and the same rights as the nationals of the Power exercising authority in the territory, with regard to the protection of their persons and effects, with regard to the acquisition and transmission of their movable and real property, and with regard to the exercise of their professions.

ARTICLE 4.

Each State reserves the right to dispose freely of its property and to grant concessions for the development of the natural resources of the territory, but no regulations on these matters shall admit of any differential

treatment between the nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention.

ARTICLE 5.

Subject to the provisions of the present chapter, the navigation of the Niger, of its branches and outlets, and of all the rivers, and of their branches and outlets, within the territories specified in Article 1, as well as of the lakes situated within those territories, shall be entirely free for merchant vessels and for the transport of goods and passengers.

Craft of every kind belonging to the nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention shall be treated in all respects on a footing of perfect equality.

ARTICLE 6.

The navigation shall not be subject to any restriction or dues based on the mere fact of navigation.

It shall not be exposed to any obligation in regard to landing, station, or dépôt, or for breaking bulk or for compulsory entry into port.

No maritime or river toll, based on the mere fact of navigation, shall be levied on vessels, nor shall any transit duty be levied on goods on board. Only such taxes or duties shall be collected as may be an equivalent for services rendered to navigation itself. The tariff of these taxes or duties shall not admit of any differential treatment.

ARTICLE 7.

The affluents of the rivers and lakes specified in Article 5 shall in all respects be subject to the same rules as the rivers or lakes of which they are tributaries.

The roads, railways or lateral canals which may be constructed with the special object of obviating the innavigability or correcting the imperfections of the water route on certain sections of the rivers and lakes specified in Article 5, their affluents, branches and outlets, shall be considered, in their quality of means of communication, as dependencies of these rivers and lakes, and shall be equally open to the traffic of the nationals of the Signatory Powers and of the States, Members of the League of Nations, which may adhere to the present Convention.

On these roads, railways and canals only such tolls shall be collected as are calculated on the cost of construction, maintenance and management, and on the profits reasonably accruing to the undertaking. As regards the tariff of these tolls, the nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention, shall be treated on a footing of perfect equality.

ARTICLE 8.

Each of the Signatory Powers shall remain free to establish the rules which it may consider expedient for the purpose of ensuring the safety and control of navigation, on the understanding that these rules shall facilitate, as far as possible, the circulation of merchant vessels.

ARTICLE 9.

In such sections of the rivers and of their affluents, as well as on such lakes as are not necessarily utilised by more than one riverain State, the Governments exercising authority shall remain free to establish such systems as may be required for the maintenance of public safety and order, and for other necessities of the work of civilisation and colonisation; but the regulations shall not admit of any differential treatment between vessels or between nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention.

ARTICLE 10.

The Signatory Powers recognise the obligation to maintain in the regions subject to their jurisdiction an authority and police forces sufficient to ensure protection of persons and of property and, if necessary, freedom of trade and of transit.

ARTICLE 11.

The Signatory Powers exercising sovereign rights or authority in African territories will continue to watch over the preservation of the native populations and to supervise the improvement of the conditions of their moral and material well-being. They will, in particular, endeavour to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea.

They will protect and favour, without distinction of nationality or of religion, the religious, scientific or charitable institutions and undertakings created and organized by the nationals of the other Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention, which aim at leading the natives in the path of progress and civilisation. Scientific missions, their property and their collections, shall likewise be the objects of special solicitude.

Freedom of conscience and the free exercise of all forms of religion are expressly guaranteed to all nationals of the Signatory Powers and to those under the jurisdiction of States, Members of the League of Nations, which may become parties to the present Convention. Similarly, missionaries shall have the right to enter into, and to travel and reside in, African territory with a view to prosecuting their calling.

The application of the provisions of the two preceding paragraphs shall

be subject only to such restrictions as may be necessary for the maintenance of public security and order, or as may result from the enforcement of the constitutional law of any of the Powers exercising authority in African territories.

ARTICLE 12.

The Signatory Powers agree that if any dispute whatever should arise between them relating to the application of the present Convention which cannot be settled by negotiation, this dispute shall be submitted to an arbitral tribunal in conformity with the provisions of the Covenant of the League of Nations.

ARTICLE 13.

Except in so far as the stipulations contained in Article 1 of the present Convention are concerned, the General Act of Berlin of 26th February, 1885, and the General Act of Brussels of 2nd July, 1890, with the accompanying Declaration of equal date, shall be considered as abrogated, in so far as they are binding between the Powers which are Parties to the present Convention.

ARTICLE 14.

States exercising authority over African territories, and other States, Members of the League of Nations, which were parties either to the Act of Berlin or to the Act of Brussels or the Declaration annexed thereto, may adhere to the present Convention. The Signatory Powers will use their best endeavours to obtain the adhesion of these States.

This adhesion shall be notified through the diplomatic channel to the Government of the French Republic, and by it to all the Signatory or adhering States. The adhesion will come into force from the date of its notification to the French Government.

ARTICLE 15.

The Signatory Powers will reassemble at the expiration of ten years from the coming into force of the present Convention, in order to introduce into it such modifications as experience may have shown to be necessary.

The present Convention shall be ratified as soon as possible.

Each Power will address its ratification to the French Government, which will inform all the other Signatory Powers.

The ratifications will remain deposited in the archives of the French Government.

The present Convention will come into force for each Signatory Power from the date of the deposit of its ratification, and from that moment that Power will be bound in respect of other Powers which have already deposited their ratifications.

On the coming into force of the present Convention, the French Government will transmit a certified copy to the Powers which, under the

Treaties of Peace, have undertaken to accept and observe it. The names of these Powers will be notified to the States which adhere.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done at Saint-Germain-en-Laye, the 10th day of September, 1919, in a single copy, which will remain deposited in the archives of the Government of the French Republic, and of which authenticated copies will be sent to each of the Signatory Powers.

(L.S.)	FRANK L. POLK.
(L.S.)	HENRY WHITE.
(L.S.)	TASKER H. BLISS.
(L.S.)	HYMANS.
(L.S.)	J. VAN DEN HEUVEL.
(L.S.)	E. VANDERVELDE.
(L.S.)	ARTHUR JAMES BALFOUR.
(L.S.)	
(L.S.)	MILNER.
(L.S.)	G. N. BARNES.
(L.S.)	A. E. KEMP.
(L.S.)	G. F. PEARCE.
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(L.S.)	L. L. KLOTZ.
(L.S.)	ANDRÉ TARDIEU.
(L.S.)	JULES CAMBON.
(L.S.)	TOM. TITTONI.
(L.S.)	VITTORIO SCIALOJA.
(L.S.)	MAGGIORINO FERRARIS.
(L.S.)	GUGLIELMO MARCONI.
(L.S.)	S. CHINDA.
(L.S.)	K. MATSUI.
(L.S.)	H. IJUN.
(L.S.)	AFFONSO COSTA.
(L.S.)	AUGUSTO SOARES.

CONVENTION RELATING TO THE LIQUOR TRAFFIC IN AFRICA AND PROTOCOL.¹

Signed at Saint-Germain-en-Laye, September 10, 1919.

(Translation.)

The United States of America, Belgium, the British Empire, France, Italy, Japan and Portugal,

Whereas it is necessary to continue in the African territories placed under their administration the struggle against the dangers of alcoholism which they have maintained by subjecting spirits to constantly increasing duties;

Whereas, further, it is necessary to prohibit the importation of distilled beverages rendered more especially dangerous to the native populations by the nature of the products entering into their composition or by the opportunities which a low price gives for their extended use;

Whereas, finally, the restrictions placed on the importation of spirit would be of no effect unless the local manufacture of distilled beverages was at the same time strictly controlled;

Have appointed as their plenipotentiaries:

The President of the United States of America:

The Honourable Frank Lyon Polk, Under-Secretary of State;
The Honourable Henry White, formerly Ambassador Extraordinary and Plenipotentiary of the United States at Rome and Paris;
General Tasker H. Bliss, Military Representative of the United States on the Supreme War Council;

His Majesty the King of the Belgians:

M. Paul Hymans, Minister for Foreign Affairs, Minister of State;
M. Jules van den Heuvel, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of the Belgians, Minister of State;
M. Emile Vandervelde, Minister of Justice, Minister of State;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions Beyond the Seas, Emperor of India:

The Right Honourable Arthur James Balfour, O.M., M.P., His Secretary of State for Foreign Affairs;
The Right Honourable Andrew Bonar Law, M.P., His Lord Privy Seal;

¹ Great Britain, Treaty Series, 1919, No. 19.

The Right Honourable Viscount Milner, G.C.B., G.C.M.G., His Secretary of State for the Colonies;

The Right Honourable George Nicoll Barnes, M.P., Minister without portfolio;

And:

for the Dominion of Canada:

The Honourable Sir Albert Edward Kemp, K.C.M.G., Minister of the Overseas Forces;

for the Commonwealth of Australia:

The Honourable George Foster Pearce, Minister of Defence;

for the Union of South Africa:

The Right Honourable Viscount Milner, G.C.B., G.C.M.G.;

for the Dominion of New Zealand:

The Honourable Sir Thomas Mackenzie, K.C.M.G., High Commissioner for New Zealand in the United Kingdom;

for India:

The Right Honourable Baron Sinho, K.C., Under-Secretary of State for India;

The President of the French Republic:

M. Georges Clemenceau, President of the Council, Minister of War;

M. Stephen Pichon, Minister for Foreign Affairs.

M. Louis-Lucien Klotz, Minister of Finance;

M. André Tardieu, Commissary-General for Franco-American Military Affairs;

M. Jules Cambon, Ambassador of France;

His Majesty the King of Italy:

The Honourable Tommaso Tittoni, Senator of the Kingdom, Minister for Foreign Affairs;

The Honourable Vittorio Scialoja, Senator of the Kingdom;

The Honourable Maggiorino Ferraris, Senator of the Kingdom;

The Honourable Guglielmo Marconi, Senator of the Kingdom;

The Honourable Silvio Crespi, Deputy;

His Majesty the Emperor of Japan:

Viscount Chinda, Ambassador Extraordinary and Plenipotentiary of

H.M. the Emperor of Japan at London;

M. K. Matsui, Ambassador Extraordinary and Plenipotentiary of

H.M. the Emperor of Japan at Paris;

The President of the Portuguese Republic:

Dr. Affonso da Costa, formerly President of the Council of Ministers;
Dr. Augusto Luiz Vieira Soares, formerly Minister for Foreign
Affairs;

Who, having communicated their full powers found in good and due
form,

Have agreed as follows:

ARTICLE 1.

The High Contracting Parties undertake to apply the following measures for the restriction of the liquor traffic in the territories which are or may be subjected to their control throughout the whole of the continent of Africa, with the exception of Algiers, Tunis, Morocco, Libya, Egypt and the Union of South Africa.

The provisions applicable to the continent of Africa shall also apply to the islands lying within 100 nautical miles of the coast.

ARTICLE 2.

The importation, distribution, sale and possession of trade spirits of every kind, and of beverages mixed with these spirits, are prohibited in the area referred to in Article 1. The local Governments concerned will decide respectively which distilled beverages will be regarded in their territories as falling within the category of trade spirits. They will endeavour, as far as possible, to establish a uniform nomenclature and uniform measures against fraud.

ARTICLE 3.

The importation, distribution, sale and possession are also forbidden of distilled beverages containing essential oils or chemical products which are recognised as injurious to health, such as thujone, star anise, benzoic aldehyde, salicylic esters, hyssop and absinthe.

The local Governments concerned will likewise endeavour to establish by common agreement the nomenclature of those beverages whose importation, distribution, sale and possession according to the terms of this provision should be prohibited.

ARTICLE 4.

An import duty of not less than 800 francs per hectolitre of pure alcohol shall be levied upon all distilled beverages, other than those indicated in Articles 2 and 3, which are imported into the area referred to in Article 1, except in so far as the Italian colonies are concerned, where the duty may not be less than 600 francs.

The High Contracting Parties will prohibit the importation, distribution,

sale and possession of spirituous liquors in those regions of the area referred to in Article 1 where their use has not been developed.

The above prohibition can be suspended only in the case of limited quantities destined for the consumption of non-native persons, and imported under the system and conditions determined by each Government.

ARTICLE 5.

The manufacture of distilled beverages of every kind is forbidden in the area referred to in Article 1.

The importation, distribution, sale and possession of stills and of all apparatus or portions of apparatus suitable for distillation of alcohol and the rectification or redistillation of spirits are forbidden in the same area, subject to the provisions of Article 6.

The provisions of the two preceding paragraphs do not apply to the Italian colonies; the manufacture of distilled beverages, other than those specified in Articles 2 and 3, will continue to be permitted therein, on condition that they are subject to an excise duty equal to the import duty established in Article 4.

ARTICLE 6.

The restrictions on the importation, distribution, sale, possession and manufacture of spirituous beverages do not apply to pharmaceutical alcohols required for medical, surgical or pharmaceutical establishments. The importation, distribution, sale and possession are also permitted of:

1. Testing stills, that is to say, the small apparatus in general use for laboratory experiments, which are employed intermittently, are not fitted with rectifying heads, and the capacity of whose retort does not exceed one litre;

2. Apparatus or parts of apparatus required for experiments in scientific institutions;

3. Apparatus or parts of apparatus employed for definite purposes, other than the production of alcohol, by qualified pharmacists and by persons who can show good cause for the possession of such apparatus;

4. Apparatus necessary for the manufacture of alcohol for commercial purposes, and employed by duly authorised persons, such manufacture being subject to the system of control established by the local administrations.

The necessary permission in the foregoing cases will be granted by the local administration of the territory in which the stills, apparatus, or portions of apparatus are to be utilised.

ARTICLE 7.

A Central International Office, placed under the control of the League of Nations, shall be established for the purpose of collecting and preserving documents of all kinds exchanged by the High Contracting Parties with

regard to the importation and manufacture of spirituous liquors under the conditions referred to in the present Convention.

Each of the High Contracting Parties shall publish an annual report showing the quantities of spirituous beverages imported or manufactured and the duties levied under Articles 4 and 5. A copy of this report shall be sent to the Central International Office and to the Secretary-General of the League of Nations.

ARTICLE 8.

The High Contracting Parties agree that if any dispute whatever should arise between them relating to the application of the present Convention which cannot be settled by negotiation, this dispute shall be submitted to an arbitral tribunal in conformity with the Covenant of the League of Nations.

ARTICLE 9.

The High Contracting Parties reserve the right of introducing into the present Convention by common agreement after a period of five years such modifications as may prove to be necessary.

ARTICLE 10.

The High Contracting Parties will use every effort to obtain the adhesion to the present Convention of the other States exercising authority over the territories of the African Continent.

This adhesion shall be notified through the diplomatic channel to the Government of the French Republic, and by it to all the signatory or adhering States. The adhesion will come into effect from the date of the notification to the French Government.

ARTICLE 11.

All the provisions of former general international Conventions relating to the matters dealt with in the present Convention shall be considered as abrogated in so far as they are binding between the Powers which are parties to the present Convention.

The present Convention shall be ratified as soon as possible.

Each Power will address its ratification to the French Government, who will inform all the other signatory Powers.

The ratifications will remain deposited in the archives of the French Government.

The present Convention will come into force for each signatory Power from the date of the deposit of its ratification, and from that moment that Power will be bound in respect of other Powers which have already deposited their ratifications.

On the coming into force of the present Convention, the French Government will transmit a certified copy to the Powers which under the Treaties

of Peace have undertaken to accept and observe it, and are in consequence placed in the same position as the Contracting Parties. The names of these Powers will be notified to the States which adhere.

In faith whereof the above-named Plenipotentiaries have signed the present Convention.

Done at Saint-Germain-en-Laye, the tenth day of September, one thousand nine hundred and nineteen, in a single copy which will remain deposited in the archives of the Government of the French Republic, and of which authenticated copies will be sent to each of the signatory Powers.

(L.S.)	FRANK L. POLK.
(L.S.)	HENRY WHITE.
(L.S.)	TASKER H. BLISS.
(L.S.)	HYMANS.
(L.S.)	J. VAN DEN HEUVEL.
(L.S.)	E. VANDERVELDE.
(L.S.)	ARTHUR JAMES BALFOUR.
(L.S.)	MILNER.
(L.S.)	GEO. N. BARNES.
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(L.S.)	MAGGIORINO FERRARIS.
(L.S.)	GUGLIELMO MARCONI.
(L.S.)	S. CHINDA.
(L.S.)	K. MATSUI.
(L.S.)	AFFONSO COSTA.
(L.S.)	AUGUSTA SOARES.

PROTOCOL.

At the moment of signing the Convention of even date relating to the Liquor Traffic in Africa, the undersigned Plenipotentiaries declare in the name of their respective Governments that they would regard it as contrary to the intention of the High Contracting Parties and to the spirit of this

Convention that pending the coming into force of the Convention a contracting Party should adopt any measure which is contrary to its provisions.

Done at Saint-Germain-en-Laye, in a single copy, the tenth day of September, one thousand nine hundred and nineteen.

[Same signatures as on the treaty.]

PACT OF UNION OF CENTRAL AMERICA ¹

Concluded at San José, Costa Rica

January 19, 1921.

The Governments of the Republics of Guatemala, Salvador, Honduras, and Costa Rica, regarding it as a high patriotic duty to bring about as far as possible the reconstruction of the Federal Republic of Central America upon a basis of justice and equality that will guarantee peace, maintain harmony among the States, insure the benefits of liberty, and promote the general progress and welfare, have seen fit to conclude a treaty of union achieving that end, and to that effect have appointed as plenipotentiary delegates, namely: The Government of Guatemala the Most Excellent Licentiates Don Salvador Falla and Don Carlos Salazar; the Government of Salvador the Most Excellent Doctors Don Reyes Arrieta Rossi and Don Miguel T. Molina; the Government of Honduras the Most Excellent Doctors Don Alberto Uclés and Don Mariano Vásquez; and the Government of Costa Rica the Most Excellent Licentiates Don Alejandro Albarado Quirós and Don Cleto González Víquez; who after communicating to one another their respective full powers which they found to be in good and due form, have agreed upon the following stipulations:

ARTICLE I

The Republics of Guatemala, Salvador, Honduras, and Costa Rica join in a perpetual and indissoluble union, and will henceforth constitute a sovereign and independent nation, whose name shall be Federation of Central America. It will be the right and duty of the federal power to maintain the union, and, in accordance with the federal constitution, internal order in the States.

ARTICLE II

The four States will convene through deputies in a Constituent National Assembly, and here and now accept as the supreme law the constitution that may be framed by the said assembly in accordance with the stipulations of this treaty.

ARTICLE III

In so far as it may be consistent with the federal constitution, each State will preserve its autonomy and independence in the handling and direction

¹ Bulletin of the Pan-American Union, May, 1921, pp. 446-451.

of its domestic affairs and likewise all the powers that are not vested in the federation by the federal constitution. The constitutions of the States will remain in force in so far as they do not conflict with the provisions of the federal constitution.

ARTICLE IV

So long as the federal government, through diplomatic action, shall not have obtained the modification, derogation, or substitution of the treaties in force between the States of the federation and foreign nations, each State shall respect and continue faithfully to observe the treaties that bind it to any one foreign nation or more to the full extent implied in the existing agreements.

ARTICLE V

The Constituent National Assembly, in framing the federal constitution, will respect the following bases:

(A) There shall be a federal district under the direct rule of the federal government. The assembly will designate and mark out the territory that is constituted and within that area will designate the town or place that is to be the political capital of the federation. The State or States from which territory is taken to constitute the federal district here and now convey it gratuitously to the federation.

(B) The government of the federation will be republican, popular, representative, and responsible. Sovereignty will reside in the nation. The public powers shall be limited and must be exercised in accordance with the constitution. There will be three powers—the executive, legislative, and judiciary.

(C) The executive power shall be exercised by a federal council composed of delegates elected by the people. Each State will elect a principal and an alternate of 40 years of age or more and native citizens of the State which elect them. The term of the council will be five years.

The delegates and their alternates shall reside in the federal capital. The alternates will attend the meetings of the council without a vote, but they shall cast their vote, however, whenever the meeting is not attended by their principals.

In order to impart validity to the action of the council, it is necessary that all the States be represented therein. The decisions are arrived at by a plurality vote, except in cases where the constitution may call for a greater majority. In case of a tie the president will cast two votes.

The council will elect from among the delegates a president and a vice-president, whose term of office will be one year. The president of the council cannot be reelected for the year immediately following.

The president of the council will be regarded as president of the federa-

tion, but he will always act in the name and by a resolution or direction of the federal council.

The council will apportion among its members in the manner it may deem most appropriate the handling of public affairs and may put any one of the alternates or more in charge of a department, or more that it may deem expedient. The constitution will determine the form in which foreign relations are to be conducted and will complete the organization of the executive power.

(D) The legislative power will be vested in two houses—the Senate and the Chamber of Deputies. The Senate will consist of three senators from each State, elected by the congress thereof. The senators shall be 40 years of age or more and citizens of any one of the States. Their term will be six years, and they will be renewed every other year in thirds. The Chamber of Deputies will consist of representatives elected by the people, one deputy for every 100,000 inhabitants or fraction of more than 50,000. The constituent assembly will determine the number of deputies to be elected by each State until a general census of the federation is taken.

Senators and deputies may be reelected indefinitely. In each house three-fourths of the whole number of members will form the quorum.

No law will be valid unless it has been approved in the separate houses by a plurality of votes in the Chamber of Deputies and by two-thirds of the votes of the senators, and unless it has been sanctioned by the executive as the federal constitution may provide.

(E) The judicial power shall be exercised by a supreme court of justice and by the lower courts that may be established by law. The Senate, from a list of 21 names submitted by the federal executive, will elect 7 incumbent magistrates, who will constitute the court, and 3 alternates to fill the temporary absence of the incumbents.

Vacancies will be filled by new elections of incumbents or alternates. The magistrates shall not be removed from office unless the removal be authorized by a judicial sentence.

The supreme court will have jurisdiction in disputes to which the federation is a party, the legal controversies that may arise between two or more States, the conflicts that may occur between the powers of any one State or of the federation as to the constitutionality of their acts, and of all other matters which may be referred to it by the federal constitution or the organic law.

The States having pending questions among themselves as to boundaries or the validity or execution of judgment or awards made before the date of this treaty will be at liberty to refer them to arbitration. The federal court may take cognizance of such questions, in the capacity of arbitrator, if the States concerned should refer to its decision.

(F) The federation guarantees to every inhabitant freedom of thought and conscience. There shall be no legislation on religious subjects. In all

the States toleration of cults that are not against morals or public policy shall be an obligatory principle.

(G) The federation recognizes the principle that human life is inviolable as to political and like offenses, and guarantees all men equality before the law and the protection that the States must grant to destitute classes as also to the proletariat.

(H) The federation guarantees the freedom of teaching.

Primary instruction shall be compulsory, and that which is given in public schools shall be free, under the direction and at the expense of the States.

Colleges of secondary instruction may be founded and supported by the federation, the States, municipal governments, and private persons.

The federation will create as soon as possible a national university, and will give preference, with regard to their early establishment, to the section of agriculture, industry, commerce, and mathematical sciences.

(I) The federation likewise guarantees in every State the respect of individual rights, as also the freedom of suffrage and the rotation in power.

(J) The army is an institution intended for national defense, and the maintenance of peace and public order. It is essentially a passive body and may not engage in debates.

Soldiers on active duty shall have no right to vote.

The army will be exclusively under the orders of the federal council.

The States shall not maintain any force other than of police for the maintenance of public order.

The garrisons which may be kept permanently or temporarily by the federation in any State will be under the command of national chiefs that the council shall freely appoint and remove; but if in any State there should occur a subversive movement or serious grounds may exist to apprehend a grave disturbance, those forces shall place themselves at the command of the government of the State. If those forces should be insufficient to suppress the rebellion, the government of the State will ask for and the council will supply adequate reinforcements.

Military service, garrison duty, and military instruction will be regulated by law so as to be governed by fixed rules.

The council shall have the free disposal of the armament and war material that may now exist in the States after those States shall have been supplied with the amount needed for the police force.

The States acknowledge it to be necessary and expedient that the federation should reduce armaments and armies to the strictly necessary, so as to release hands to farming and manufacturing and to restoring and promoting the common welfare the excessive amounts taken by that branch.

(L) The federal government will administer the national public finances, which will be different from those of the States.

The law will create federal revenues and taxes.

(M) The States will continue the service of their present domestic and foreign debts. It will be the duty of the federal government to see that the service is faithfully performed and that the revenues pledged for that purpose be applied thereto.

Henceforward none of the States shall contract for or issue foreign loans without being authorized by a law of the State ratified by a federal law, nor shall it enter into contracts that may in any way compromise its sovereignty or independence or the integrity of its territory.

(N) The federation shall not contract for or issue foreign loans without being authorized to do so by law approved by two-thirds of the votes in the Chamber of Deputies and three-fourths of the votes of the Senate.

(O) The constitution may set a term after which the ability to read and write may be set up as an essential requisite for the exercise of the right of suffrage in the elections of federal authorities.

(P) The constitution will lay down the course through which amendments of its dispositions may be ordered. However, if the reform should make any change in any one of the bases set forth in this article, it will be absolutely necessary in addition to the other general requirements of the constitution that the legislatures of all the States shall give their consent.

(Q) The constitution will determine and specify the subject that shall be an exclusive matter for federal legislation.

The Constituent National Assembly, in framing the constitution, will complete the plan and purpose of the said constitution, developing the foregoing bases, but in no way conflicting with them.

Immediately after the enactment of the constitution the assembly will pass the complementary laws concerning the freedom of the press, habeas corpus, state of siege, which shall be held as part of the federal constitution.

ARTICLE VI

The Constituent National Assembly referred to in Article II of this treaty will consist of 15 deputies for each State that will be elected by their respective congress. In order to be a deputy one must be 25 years old or more and a citizen of any one of the five States of Central America.

The deputies shall enjoy immunity for their persons and property from the moment when they are declared elected by the congress of a State until one month after the sessions of the assembly are closed.

ARTICLE VII

Three-fifths of the total number of deputies will form a quorum of the assembly. The vote will be cast by States. If one or more deputies of one State should be absent, the deputy or deputies present will assume the complete representation of the State. If the deputies of one State should disagree, the vote of the majority of the deputies will be regarded as the vote of

the State, and in case of a tie, it will be regarded as concurring in the majority vote of the other States; or, if there should be a tie, among those States themselves, that which agrees with the majority of the personal votes of the deputies. The decisions of the assembly will be taken on a majority vote of the State.

ARTICLE VIII

For the performance of these stipulations, there is instituted here and now a Provisional Federal Council consisting of a delegate from each State. The said council will take charge of the duty and ordering all the measures preliminary to the organization of the federation and its initial government, and especially that of calling the Constituent National Assembly; of promulgating the constitution, constituent laws, and other resolutions passed by the Assembly; to issue appropriate orders to have the States elect in good time their delegates to the council, Senate, and Chamber of Deputies; and, finally, to give possession to the federal council, whereupon its functions will terminate.

ARTICLE IX

Delegates to the provisional council must be 40 years old or more and citizens of the State by which they are elected. They will enjoy immunity for their persons and property from the moment when they are elected until one month after they retire from their office. They shall, in addition, enjoy in the State where they perform their duties all the privileges and immunities which by law or usage are granted to the heads of diplomatic missions.

ARTICLE X

The Congress of each State, immediately upon approving this treaty, shall elect the delegate that belongs to it in the provisional council, and through the proper channel give notice of that election to the Central American International Office. That office in turn will communicate to the governments and also to the elected delegates the fact of its having received the ratification of three States, to the end that within the time stated hereafter the delegates may meet and begin their labors.

ARTICLE XI

The provisional federal council will meet in the city of Tegucigalpa, capital of Honduras, not later than 30 days after the third ratification of this covenant shall have been deposited in the Central American International Office.

ARTICLE XII

In order to impart validity to the acts of the provisional council the presence of not less than three delegates will be required.

ARTICLE XIII

The provisional council will elect a president and a secretary, who will sign all the papers needed. The correspondence shall be conducted by the secretary.

ARTICLE XIV

When the fourth ratification takes place the Central American International Office or the provisional federal council, if still in session, will call upon the delegate concerned to join the provisional council.

ARTICLE XV

The congress of each State at the same time it elects its delegate to the provisional council, in accordance with the provision in Article X of this treaty, will elect the deputies to the constituent assembly that belongs to the State.

ARTICLE XVI

After the deputies to the constituent assembly shall have been elected, the minister of foreign relations of the State concerned will so notify the Central American International Office and issue the proper credentials to the deputies that have been elected.

ARTICLE XVII

After the Central American International Office shall have informed the provisional federal council of the election of the deputies by at least three States, the provisional federal council shall call the constituent national assembly so that it may organize in the city of Tegucigalpa on the date set by the decree calling the assembly, which shall be made known by telegraph to the ministry of foreign relations of each State and to each deputy individually not less than 30 days in advance. The provisional council shall see that the constituent assembly shall organize not later than the 15th of September, 1921, which is the centennial of the political emancipation of Central America.

ARTICLE XVIII

It will be sufficient that three of the contracting States ratify this treaty to have it considered as final and binding among them and to have it carried into effect. The State that should not approve the covenant may, however, join the federation at any time it applies therefor, and the federation will admit it without any other formality than the presenting of a law approving this treaty, the federal constitution, and constituent laws. In that event the federal council and the two legislative houses will be enlarged in the proper degree.

ARTICLE XIX

The contracting States are sincerely sorry that the sister Republic of Nicaragua does not desire to join the federation of Central America. If the said Republic should later decide to join the union, the federation will extend the greatest facilities for its joining in the treaty that may be made for that purpose. In any event, the federation will continue to consider and treat her as a part of the Central American family, just as it will any State that for any reason should not ratify this covenant.

ARTICLE XX

Each State shall deliver to the provisional council the moneys that may be named by it to defray the expenses incurred in the discharge of its mission, and will determine and pay their salaries to the several constituent deputies.

ARTICLE XXI

The present treaty shall be submitted in each State as soon as possible to the legislative approval that its constitution may require, and the ratification shall be immediately notified to the Central American International Office, to which a copy will be sent in the customary form. On receipt of the copy of that ratification the aforesaid office will so advise the other States, and the notice will be held and will have the same value as an exchange.

Done at San José, Costa Rica, in quadruplicate, on the 19th day of January, 1921.

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